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Executive Order 14028 of May 12, 2021

The President

Improving the Nation's Cybersecurity

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The United States faces persistent and increasingly sophisticated malicious cyber campaigns that threaten the public sector, the private sector, and ultimately the American people's security and privacy. The Federal Government must improve its efforts to identify, deter, protect against, detect, and respond to these actions and actors. The Federal Government must also carefully examine what occurred during any major cyber incident and apply lessons learned. But cybersecurity requires more than government action. Protecting our Nation from malicious cyber actors requires the Federal Government to partner with the private sector. The private sector must adapt to the continuously changing threat environment, ensure its products are built and operate securely, and partner with the Federal Government to foster a more secure cyberspace. In the end, the trust we place in our digital infrastructure should be proportional to how trustworthy and transparent that infrastructure is, and to the consequences we will incur if that trust is misplaced.

Incremental improvements will not give us the security we need; instead, the Federal Government needs to make bold changes and significant investments in order to defend the vital institutions that underpin the American way of life. The Federal Government must bring to bear the full scope of its authorities and resources to protect and secure its computer systems, whether they are cloud-based, on-premises, or hybrid. The scope of protection and security must include systems that process data (information technology (IT)) and those that run the vital machinery that ensures our safety (operational technology (OT)).

It is the policy of my Administration that the prevention, detection, assessment, and remediation of cyber incidents is a top priority and essential to national and economic security. The Federal Government must lead by example. All Federal Information Systems should meet or exceed the standards and requirements for cybersecurity set forth in and issued pursuant to this order.

Sec. 2. *Removing Barriers to Sharing Threat Information.* (a) The Federal Government contracts with IT and OT service providers to conduct an array of day-to-day functions on Federal Information Systems. These service providers, including cloud service providers, have unique access to and insight into cyber threat and incident information on Federal Information Systems. At the same time, current contract terms or restrictions may limit the sharing of such threat or incident information with executive departments and agencies (agencies) that are responsible for investigating or remediating cyber incidents, such as the Cybersecurity and Infrastructure Security Agency (CISA), the Federal Bureau of Investigation (FBI), and other elements of the Intelligence Community (IC). Removing these contractual barriers and increasing the sharing of information about such threats, incidents, and risks are necessary steps to accelerating incident deterrence, prevention, and response efforts and to enabling more effective defense of agencies' systems and of information collected, processed, and maintained by or for the Federal Government.

(b) Within 60 days of the date of this order, the Director of the Office of Management and Budget (OMB), in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, shall review the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement contract requirements and language for contracting with IT and OT service providers and recommend updates to such requirements and language to the FAR Council and other appropriate agencies. The recommendations shall include descriptions of contractors to be covered by the proposed contract language.

(c) The recommended contract language and requirements described in subsection (b) of this section shall be designed to ensure that:

(i) service providers collect and preserve data, information, and reporting relevant to cybersecurity event prevention, detection, response, and investigation on all information systems over which they have control, including systems operated on behalf of agencies, consistent with agencies' requirements;

(ii) service providers share such data, information, and reporting, as they relate to cyber incidents or potential incidents relevant to any agency with which they have contracted, directly with such agency and any other agency that the Director of OMB, in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, deems appropriate, consistent with applicable privacy laws, regulations, and policies;

(iii) service providers collaborate with Federal cybersecurity or investigative agencies in their investigations of and responses to incidents or potential incidents on Federal Information Systems, including by implementing technical capabilities, such as monitoring networks for threats in collaboration with agencies they support, as needed; and

(iv) service providers share cyber threat and incident information with agencies, doing so, where possible, in industry-recognized formats for incident response and remediation.

(d) Within 90 days of receipt of the recommendations described in subsection (b) of this section, the FAR Council shall review the proposed contract language and conditions and, as appropriate, shall publish for public comment proposed updates to the FAR.

(e) Within 120 days of the date of this order, the Secretary of Homeland Security and the Director of OMB shall take appropriate steps to ensure to the greatest extent possible that service providers share data with agencies, CISA, and the FBI as may be necessary for the Federal Government to respond to cyber threats, incidents, and risks.

(f) It is the policy of the Federal Government that:

(i) information and communications technology (ICT) service providers entering into contracts with agencies must promptly report to such agencies when they discover a cyber incident involving a software product or service provided to such agencies or involving a support system for a software product or service provided to such agencies;

(ii) ICT service providers must also directly report to CISA whenever they report under subsection (f)(i) of this section to Federal Civilian Executive Branch (FCEB) Agencies, and CISA must centrally collect and manage such information; and

(iii) reports pertaining to National Security Systems, as defined in section 10(h) of this order, must be received and managed by the appropriate agency as to be determined under subsection (g)(i)(E) of this section.

(g) To implement the policy set forth in subsection (f) of this section:

(i) Within 45 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of Defense acting through the Director of the National Security Agency (NSA), the Attorney General,

and the Director of OMB, shall recommend to the FAR Council contract language that identifies:

- (A) the nature of cyber incidents that require reporting;
- (B) the types of information regarding cyber incidents that require reporting to facilitate effective cyber incident response and remediation;
- (C) appropriate and effective protections for privacy and civil liberties;
- (D) the time periods within which contractors must report cyber incidents based on a graduated scale of severity, with reporting on the most severe cyber incidents not to exceed 3 days after initial detection;
- (E) National Security Systems reporting requirements; and
- (F) the type of contractors and associated service providers to be covered by the proposed contract language.

(ii) Within 90 days of receipt of the recommendations described in subsection (g)(i) of this section, the FAR Council shall review the recommendations and publish for public comment proposed updates to the FAR.

(iii) Within 90 days of the date of this order, the Secretary of Defense acting through the Director of the NSA, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall jointly develop procedures for ensuring that cyber incident reports are promptly and appropriately shared among agencies.

(h) Current cybersecurity requirements for unclassified system contracts are largely implemented through agency-specific policies and regulations, including cloud-service cybersecurity requirements. Standardizing common cybersecurity contractual requirements across agencies will streamline and improve compliance for vendors and the Federal Government.

(i) Within 60 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA, in consultation with the Secretary of Defense acting through the Director of the NSA, the Director of OMB, and the Administrator of General Services, shall review agency-specific cybersecurity requirements that currently exist as a matter of law, policy, or contract and recommend to the FAR Council standardized contract language for appropriate cybersecurity requirements. Such recommendations shall include consideration of the scope of contractors and associated service providers to be covered by the proposed contract language.

(j) Within 60 days of receiving the recommended contract language developed pursuant to subsection (i) of this section, the FAR Council shall review the recommended contract language and publish for public comment proposed updates to the FAR.

(k) Following any updates to the FAR made by the FAR Council after the public comment period described in subsection (j) of this section, agencies shall update their agency-specific cybersecurity requirements to remove any requirements that are duplicative of such FAR updates.

(l) The Director of OMB shall incorporate into the annual budget process a cost analysis of all recommendations developed under this section.

Sec. 3. Modernizing Federal Government Cybersecurity. (a) To keep pace with today's dynamic and increasingly sophisticated cyber threat environment, the Federal Government must take decisive steps to modernize its approach to cybersecurity, including by increasing the Federal Government's visibility into threats, while protecting privacy and civil liberties. The Federal Government must adopt security best practices; advance toward Zero Trust Architecture; accelerate movement to secure cloud services, including Software as a Service (SaaS), Infrastructure as a Service (IaaS), and Platform as a Service (PaaS); centralize and streamline access to cybersecurity data to drive analytics for identifying and managing cybersecurity risks; and invest in both technology and personnel to match these modernization goals.

(b) Within 60 days of the date of this order, the head of each agency shall:

- (i) update existing agency plans to prioritize resources for the adoption and use of cloud technology as outlined in relevant OMB guidance;
- (ii) develop a plan to implement Zero Trust Architecture, which shall incorporate, as appropriate, the migration steps that the National Institute of Standards and Technology (NIST) within the Department of Commerce has outlined in standards and guidance, describe any such steps that have already been completed, identify activities that will have the most immediate security impact, and include a schedule to implement them; and
- (iii) provide a report to the Director of OMB and the Assistant to the President and National Security Advisor (APNSA) discussing the plans required pursuant to subsection (b)(i) and (ii) of this section.
- (c) As agencies continue to use cloud technology, they shall do so in a coordinated, deliberate way that allows the Federal Government to prevent, detect, assess, and remediate cyber incidents. To facilitate this approach, the migration to cloud technology shall adopt Zero Trust Architecture, as practicable. The CISA shall modernize its current cybersecurity programs, services, and capabilities to be fully functional with cloud-computing environments with Zero Trust Architecture. The Secretary of Homeland Security acting through the Director of CISA, in consultation with the Administrator of General Services acting through the Federal Risk and Authorization Management Program (FedRAMP) within the General Services Administration, shall develop security principles governing Cloud Service Providers (CSPs) for incorporation into agency modernization efforts. To facilitate this work:
- (i) Within 90 days of the date of this order, the Director of OMB, in consultation with the Secretary of Homeland Security acting through the Director of CISA, and the Administrator of General Services acting through FedRAMP, shall develop a Federal cloud-security strategy and provide guidance to agencies accordingly. Such guidance shall seek to ensure that risks to the FCEB from using cloud-based services are broadly understood and effectively addressed, and that FCEB Agencies move closer to Zero Trust Architecture.
- (ii) Within 90 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA, in consultation with the Director of OMB and the Administrator of General Services acting through FedRAMP, shall develop and issue, for the FCEB, cloud-security technical reference architecture documentation that illustrates recommended approaches to cloud migration and data protection for agency data collection and reporting.
- (iii) Within 60 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA shall develop and issue, for FCEB Agencies, a cloud-service governance framework. That framework shall identify a range of services and protections available to agencies based on incident severity. That framework shall also identify data and processing activities associated with those services and protections.
- (iv) Within 90 days of the date of this order, the heads of FCEB Agencies, in consultation with the Secretary of Homeland Security acting through the Director of CISA, shall evaluate the types and sensitivity of their respective agency's unclassified data, and shall provide to the Secretary of Homeland Security through the Director of CISA and to the Director of OMB a report based on such evaluation. The evaluation shall prioritize identification of the unclassified data considered by the agency to be the most sensitive and under the greatest threat, and appropriate processing and storage solutions for those data.
- (d) Within 180 days of the date of this order, agencies shall adopt multi-factor authentication and encryption for data at rest and in transit, to the maximum extent consistent with Federal records laws and other applicable laws. To that end:
- (i) Heads of FCEB Agencies shall provide reports to the Secretary of Homeland Security through the Director of CISA, the Director of OMB,

and the APNSA on their respective agency's progress in adopting multi-factor authentication and encryption of data at rest and in transit. Such agencies shall provide such reports every 60 days after the date of this order until the agency has fully adopted, agency-wide, multi-factor authentication and data encryption.

(ii) Based on identified gaps in agency implementation, CISA shall take all appropriate steps to maximize adoption by FCEB Agencies of technologies and processes to implement multifactor authentication and encryption for data at rest and in transit.

(iii) Heads of FCEB Agencies that are unable to fully adopt multi-factor authentication and data encryption within 180 days of the date of this order shall, at the end of the 180-day period, provide a written rationale to the Secretary of Homeland Security through the Director of CISA, the Director of OMB, and the APNSA.

(e) Within 90 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA, in consultation with the Attorney General, the Director of the FBI, and the Administrator of General Services acting through the Director of FedRAMP, shall establish a framework to collaborate on cybersecurity and incident response activities related to FCEB cloud technology, in order to ensure effective information sharing among agencies and between agencies and CSPs.

(f) Within 60 days of the date of this order, the Administrator of General Services, in consultation with the Director of OMB and the heads of other agencies as the Administrator of General Services deems appropriate, shall begin modernizing FedRAMP by:

(i) establishing a training program to ensure agencies are effectively trained and equipped to manage FedRAMP requests, and providing access to training materials, including videos-on-demand;

(ii) improving communication with CSPs through automation and standardization of messages at each stage of authorization. These communications may include status updates, requirements to complete a vendor's current stage, next steps, and points of contact for questions;

(iii) incorporating automation throughout the lifecycle of FedRAMP, including assessment, authorization, continuous monitoring, and compliance;

(iv) digitizing and streamlining documentation that vendors are required to complete, including through online accessibility and pre-populated forms; and

(v) identifying relevant compliance frameworks, mapping those frameworks onto requirements in the FedRAMP authorization process, and allowing those frameworks to be used as a substitute for the relevant portion of the authorization process, as appropriate.

Sec. 4. *Enhancing Software Supply Chain Security.* (a) The security of software used by the Federal Government is vital to the Federal Government's ability to perform its critical functions. The development of commercial software often lacks transparency, sufficient focus on the ability of the software to resist attack, and adequate controls to prevent tampering by malicious actors. There is a pressing need to implement more rigorous and predictable mechanisms for ensuring that products function securely, and as intended. The security and integrity of "critical software"—software that performs functions critical to trust (such as affording or requiring elevated system privileges or direct access to networking and computing resources)—is a particular concern. Accordingly, the Federal Government must take action to rapidly improve the security and integrity of the software supply chain, with a priority on addressing critical software.

(b) Within 30 days of the date of this order, the Secretary of Commerce acting through the Director of NIST shall solicit input from the Federal Government, private sector, academia, and other appropriate actors to identify existing or develop new standards, tools, and best practices for complying with the standards, procedures, or criteria in subsection (e) of this section.

The guidelines shall include criteria that can be used to evaluate software security, include criteria to evaluate the security practices of the developers and suppliers themselves, and identify innovative tools or methods to demonstrate conformance with secure practices.

(c) Within 180 days of the date of this order, the Director of NIST shall publish preliminary guidelines, based on the consultations described in subsection (b) of this section and drawing on existing documents as practicable, for enhancing software supply chain security and meeting the requirements of this section.

(d) Within 360 days of the date of this order, the Director of NIST shall publish additional guidelines that include procedures for periodic review and updating of the guidelines described in subsection (c) of this section.

(e) Within 90 days of publication of the preliminary guidelines pursuant to subsection (c) of this section, the Secretary of Commerce acting through the Director of NIST, in consultation with the heads of such agencies as the Director of NIST deems appropriate, shall issue guidance identifying practices that enhance the security of the software supply chain. Such guidance may incorporate the guidelines published pursuant to subsections (c) and (i) of this section. Such guidance shall include standards, procedures, or criteria regarding:

(i) secure software development environments, including such actions as:

(A) using administratively separate build environments;

(B) auditing trust relationships;

(C) establishing multi-factor, risk-based authentication and conditional access across the enterprise;

(D) documenting and minimizing dependencies on enterprise products that are part of the environments used to develop, build, and edit software;

(E) employing encryption for data; and

(F) monitoring operations and alerts and responding to attempted and actual cyber incidents;

(ii) generating and, when requested by a purchaser, providing artifacts that demonstrate conformance to the processes set forth in subsection (e)(i) of this section;

(iii) employing automated tools, or comparable processes, to maintain trusted source code supply chains, thereby ensuring the integrity of the code;

(iv) employing automated tools, or comparable processes, that check for known and potential vulnerabilities and remediate them, which shall operate regularly, or at a minimum prior to product, version, or update release;

(v) providing, when requested by a purchaser, artifacts of the execution of the tools and processes described in subsection (e)(iii) and (iv) of this section, and making publicly available summary information on completion of these actions, to include a summary description of the risks assessed and mitigated;

(vi) maintaining accurate and up-to-date data, provenance (*i.e.*, origin) of software code or components, and controls on internal and third-party software components, tools, and services present in software development processes, and performing audits and enforcement of these controls on a recurring basis;

(vii) providing a purchaser a Software Bill of Materials (SBOM) for each product directly or by publishing it on a public website;

(viii) participating in a vulnerability disclosure program that includes a reporting and disclosure process;

(ix) attesting to conformity with secure software development practices; and

(x) ensuring and attesting, to the extent practicable, to the integrity and provenance of open source software used within any portion of a product.

(f) Within 60 days of the date of this order, the Secretary of Commerce, in coordination with the Assistant Secretary for Communications and Information and the Administrator of the National Telecommunications and Information Administration, shall publish minimum elements for an SBOM.

(g) Within 45 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in consultation with the Secretary of Defense acting through the Director of the NSA, the Secretary of Homeland Security acting through the Director of CISA, the Director of OMB, and the Director of National Intelligence, shall publish a definition of the term “critical software” for inclusion in the guidance issued pursuant to subsection (e) of this section. That definition shall reflect the level of privilege or access required to function, integration and dependencies with other software, direct access to networking and computing resources, performance of a function critical to trust, and potential for harm if compromised.

(h) Within 30 days of the publication of the definition required by subsection (g) of this section, the Secretary of Homeland Security acting through the Director of CISA, in consultation with the Secretary of Commerce acting through the Director of NIST, shall identify and make available to agencies a list of categories of software and software products in use or in the acquisition process meeting the definition of critical software issued pursuant to subsection (g) of this section.

(i) Within 60 days of the date of this order, the Secretary of Commerce acting through the Director of NIST, in consultation with the Secretary of Homeland Security acting through the Director of CISA and with the Director of OMB, shall publish guidance outlining security measures for critical software as defined in subsection (g) of this section, including applying practices of least privilege, network segmentation, and proper configuration.

(j) Within 30 days of the issuance of the guidance described in subsection (i) of this section, the Director of OMB acting through the Administrator of the Office of Electronic Government within OMB shall take appropriate steps to require that agencies comply with such guidance.

(k) Within 30 days of issuance of the guidance described in subsection (e) of this section, the Director of OMB acting through the Administrator of the Office of Electronic Government within OMB shall take appropriate steps to require that agencies comply with such guidelines with respect to software procured after the date of this order.

(l) Agencies may request an extension for complying with any requirements issued pursuant to subsection (k) of this section. Any such request shall be considered by the Director of OMB on a case-by-case basis, and only if accompanied by a plan for meeting the underlying requirements. The Director of OMB shall on a quarterly basis provide a report to the APNSA identifying and explaining all extensions granted.

(m) Agencies may request a waiver as to any requirements issued pursuant to subsection (k) of this section. Waivers shall be considered by the Director of OMB, in consultation with the APNSA, on a case-by-case basis, and shall be granted only in exceptional circumstances and for limited duration, and only if there is an accompanying plan for mitigating any potential risks.

(n) Within 1 year of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of Defense, the Attorney General, the Director of OMB, and the Administrator of the Office of Electronic Government within OMB, shall recommend to the FAR Council contract language requiring suppliers of software available for purchase by agencies to comply with, and attest to complying with, any requirements issued pursuant to subsections (g) through (k) of this section.

(o) After receiving the recommendations described in subsection (n) of this section, the FAR Council shall review the recommendations and, as appropriate and consistent with applicable law, amend the FAR.

(p) Following the issuance of any final rule amending the FAR as described in subsection (o) of this section, agencies shall, as appropriate and consistent with applicable law, remove software products that do not meet the requirements of the amended FAR from all indefinite delivery indefinite quantity contracts; Federal Supply Schedules; Federal Government-wide Acquisition Contracts; Blanket Purchase Agreements; and Multiple Award Contracts.

(q) The Director of OMB, acting through the Administrator of the Office of Electronic Government within OMB, shall require agencies employing software developed and procured prior to the date of this order (legacy software) either to comply with any requirements issued pursuant to subsection (k) of this section or to provide a plan outlining actions to remediate or meet those requirements, and shall further require agencies seeking renewals of software contracts, including legacy software, to comply with any requirements issued pursuant to subsection (k) of this section, unless an extension or waiver is granted in accordance with subsection (l) or (m) of this section.

(r) Within 60 days of the date of this order, the Secretary of Commerce acting through the Director of NIST, in consultation with the Secretary of Defense acting through the Director of the NSA, shall publish guidelines recommending minimum standards for vendors' testing of their software source code, including identifying recommended types of manual or automated testing (such as code review tools, static and dynamic analysis, software composition tools, and penetration testing).

(s) The Secretary of Commerce acting through the Director of NIST, in coordination with representatives of other agencies as the Director of NIST deems appropriate, shall initiate pilot programs informed by existing consumer product labeling programs to educate the public on the security capabilities of internet-of-Things (IoT) devices and software development practices, and shall consider ways to incentivize manufacturers and developers to participate in these programs.

(t) Within 270 days of the date of this order, the Secretary of Commerce acting through the Director of NIST, in coordination with the Chair of the Federal Trade Commission (FTC) and representatives of other agencies as the Director of NIST deems appropriate, shall identify IoT cybersecurity criteria for a consumer labeling program, and shall consider whether such a consumer labeling program may be operated in conjunction with or modeled after any similar existing government programs consistent with applicable law. The criteria shall reflect increasingly comprehensive levels of testing and assessment that a product may have undergone, and shall use or be compatible with existing labeling schemes that manufacturers use to inform consumers about the security of their products. The Director of NIST shall examine all relevant information, labeling, and incentive programs and employ best practices. This review shall focus on ease of use for consumers and a determination of what measures can be taken to maximize manufacturer participation.

(u) Within 270 days of the date of this order, the Secretary of Commerce acting through the Director of NIST, in coordination with the Chair of the FTC and representatives from other agencies as the Director of NIST deems appropriate, shall identify secure software development practices or criteria for a consumer software labeling program, and shall consider whether such a consumer software labeling program may be operated in conjunction with or modeled after any similar existing government programs, consistent with applicable law. The criteria shall reflect a baseline level of secure practices, and if practicable, shall reflect increasingly comprehensive levels of testing and assessment that a product may have undergone. The Director

of NIST shall examine all relevant information, labeling, and incentive programs, employ best practices, and identify, modify, or develop a recommended label or, if practicable, a tiered software security rating system. This review shall focus on ease of use for consumers and a determination of what measures can be taken to maximize participation.

(v) These pilot programs shall be conducted in a manner consistent with OMB Circular A-119 and NIST Special Publication 2000-02 (Conformity Assessment Considerations for Federal Agencies).

(w) Within 1 year of the date of this order, the Director of NIST shall conduct a review of the pilot programs, consult with the private sector and relevant agencies to assess the effectiveness of the programs, determine what improvements can be made going forward, and submit a summary report to the APNSA.

(x) Within 1 year of the date of this order, the Secretary of Commerce, in consultation with the heads of other agencies as the Secretary of Commerce deems appropriate, shall provide to the President, through the APNSA, a report that reviews the progress made under this section and outlines additional steps needed to secure the software supply chain.

Sec. 5. *Establishing a Cyber Safety Review Board.* (a) The Secretary of Homeland Security, in consultation with the Attorney General, shall establish the Cyber Safety Review Board (Board), pursuant to section 871 of the Homeland Security Act of 2002 (6 U.S.C. 451).

(b) The Board shall review and assess, with respect to significant cyber incidents (as defined under Presidential Policy Directive 41 of July 26, 2016 (United States Cyber Incident Coordination) (PPD-41)) affecting FCEB Information Systems or non-Federal systems, threat activity, vulnerabilities, mitigation activities, and agency responses.

(c) The Secretary of Homeland Security shall convene the Board following a significant cyber incident triggering the establishment of a Cyber Unified Coordination Group (UCG) as provided by section V(B)(2) of PPD-41; at any time as directed by the President acting through the APNSA; or at any time the Secretary of Homeland Security deems necessary.

(d) The Board's initial review shall relate to the cyber activities that prompted the establishment of a UCG in December 2020, and the Board shall, within 90 days of the Board's establishment, provide recommendations to the Secretary of Homeland Security for improving cybersecurity and incident response practices, as outlined in subsection (i) of this section.

(e) The Board's membership shall include Federal officials and representatives from private-sector entities. The Board shall comprise representatives of the Department of Defense, the Department of Justice, CISA, the NSA, and the FBI, as well as representatives from appropriate private-sector cybersecurity or software suppliers as determined by the Secretary of Homeland Security. A representative from OMB shall participate in Board activities when an incident under review involves FCEB Information Systems, as determined by the Secretary of Homeland Security. The Secretary of Homeland Security may invite the participation of others on a case-by-case basis depending on the nature of the incident under review.

(f) The Secretary of Homeland Security shall biennially designate a Chair and Deputy Chair of the Board from among the members of the Board, to include one Federal and one private-sector member.

(g) The Board shall protect sensitive law enforcement, operational, business, and other confidential information that has been shared with it, consistent with applicable law.

(h) The Secretary of Homeland Security shall provide to the President through the APNSA any advice, information, or recommendations of the Board for improving cybersecurity and incident response practices and policy upon completion of its review of an applicable incident.

(i) Within 30 days of completion of the initial review described in subsection (d) of this section, the Secretary of Homeland Security shall provide to the President through the APNSA the recommendations of the Board based on the initial review. These recommendations shall describe:

- (i) identified gaps in, and options for, the Board's composition or authorities;
- (ii) the Board's proposed mission, scope, and responsibilities;
- (iii) membership eligibility criteria for private-sector representatives;
- (iv) Board governance structure including interaction with the executive branch and the Executive Office of the President;
- (v) thresholds and criteria for the types of cyber incidents to be evaluated;
- (vi) sources of information that should be made available to the Board, consistent with applicable law and policy;
- (vii) an approach for protecting the information provided to the Board and securing the cooperation of affected United States individuals and entities for the purpose of the Board's review of incidents; and
- (viii) administrative and budgetary considerations required for operation of the Board.

(j) The Secretary of Homeland Security, in consultation with the Attorney General and the APNSA, shall review the recommendations provided to the President through the APNSA pursuant to subsection (i) of this section and take steps to implement them as appropriate.

(k) Unless otherwise directed by the President, the Secretary of Homeland Security shall extend the life of the Board every 2 years as the Secretary of Homeland Security deems appropriate, pursuant to section 871 of the Homeland Security Act of 2002.

Sec. 6. Standardizing the Federal Government's Playbook for Responding to Cybersecurity Vulnerabilities and Incidents. (a) The cybersecurity vulnerability and incident response procedures currently used to identify, remediate, and recover from vulnerabilities and incidents affecting their systems vary across agencies, hindering the ability of lead agencies to analyze vulnerabilities and incidents more comprehensively across agencies. Standardized response processes ensure a more coordinated and centralized cataloging of incidents and tracking of agencies' progress toward successful responses.

(b) Within 120 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA, in consultation with the Director of OMB, the Federal Chief Information Officers Council, and the Federal Chief Information Security Council, and in coordination with the Secretary of Defense acting through the Director of the NSA, the Attorney General, and the Director of National Intelligence, shall develop a standard set of operational procedures (playbook) to be used in planning and conducting a cybersecurity vulnerability and incident response activity respecting FCEB Information Systems. The playbook shall:

- (i) incorporate all appropriate NIST standards;
 - (ii) be used by FCEB Agencies; and
 - (iii) articulate progress and completion through all phases of an incident response, while allowing flexibility so it may be used in support of various response activities.
- (c) The Director of OMB shall issue guidance on agency use of the playbook.

(d) Agencies with cybersecurity vulnerability or incident response procedures that deviate from the playbook may use such procedures only after consulting with the Director of OMB and the APNSA and demonstrating that these procedures meet or exceed the standards proposed in the playbook.

(e) The Director of CISA, in consultation with the Director of the NSA, shall review and update the playbook annually, and provide information to the Director of OMB for incorporation in guidance updates.

(f) To ensure comprehensiveness of incident response activities and build confidence that unauthorized cyber actors no longer have access to FCEB Information Systems, the playbook shall establish, consistent with applicable law, a requirement that the Director of CISA review and validate FCEB Agencies' incident response and remediation results upon an agency's completion of its incident response. The Director of CISA may recommend use of another agency or a third-party incident response team as appropriate.

(g) To ensure a common understanding of cyber incidents and the cybersecurity status of an agency, the playbook shall define key terms and use such terms consistently with any statutory definitions of those terms, to the extent practicable, thereby providing a shared lexicon among agencies using the playbook.

Sec. 7. *Improving Detection of Cybersecurity Vulnerabilities and Incidents on Federal Government Networks.* (a) The Federal Government shall employ all appropriate resources and authorities to maximize the early detection of cybersecurity vulnerabilities and incidents on its networks. This approach shall include increasing the Federal Government's visibility into and detection of cybersecurity vulnerabilities and threats to agency networks in order to bolster the Federal Government's cybersecurity efforts.

(b) FCEB Agencies shall deploy an Endpoint Detection and Response (EDR) initiative to support proactive detection of cybersecurity incidents within Federal Government infrastructure, active cyber hunting, containment and remediation, and incident response.

(c) Within 30 days of the date of this order, the Secretary of Homeland Security acting through the Director of CISA shall provide to the Director of OMB recommendations on options for implementing an EDR initiative, centrally located to support host-level visibility, attribution, and response regarding FCEB Information Systems.

(d) Within 90 days of receiving the recommendations described in subsection (c) of this section, the Director of OMB, in consultation with Secretary of Homeland Security, shall issue requirements for FCEB Agencies to adopt Federal Government-wide EDR approaches. Those requirements shall support a capability of the Secretary of Homeland Security, acting through the Director of CISA, to engage in cyber hunt, detection, and response activities.

(e) The Director of OMB shall work with the Secretary of Homeland Security and agency heads to ensure that agencies have adequate resources to comply with the requirements issued pursuant to subsection (d) of this section.

(f) Defending FCEB Information Systems requires that the Secretary of Homeland Security acting through the Director of CISA have access to agency data that are relevant to a threat and vulnerability analysis, as well as for assessment and threat-hunting purposes. Within 75 days of the date of this order, agencies shall establish or update Memoranda of Agreement (MOA) with CISA for the Continuous Diagnostics and Mitigation Program to ensure object level data, as defined in the MOA, are available and accessible to CISA, consistent with applicable law.

(g) Within 45 days of the date of this order, the Director of the NSA as the National Manager for National Security Systems (National Manager) shall recommend to the Secretary of Defense, the Director of National Intelligence, and the Committee on National Security Systems (CNSS) appropriate actions for improving detection of cyber incidents affecting National Security Systems, to the extent permitted by applicable law, including recommendations concerning EDR approaches and whether such measures should be operated by agencies or through a centralized service of common concern provided by the National Manager.

(h) Within 90 days of the date of this order, the Secretary of Defense, the Director of National Intelligence, and the CNSS shall review the recommendations submitted under subsection (g) of this section and, as appropriate, establish policies that effectuate those recommendations, consistent with applicable law.

(i) Within 90 days of the date of this order, the Director of CISA shall provide to the Director of OMB and the APNSA a report describing how authorities granted under section 1705 of Public Law 116–283, to conduct threat-hunting activities on FCEB networks without prior authorization from agencies, are being implemented. This report shall also recommend procedures to ensure that mission-critical systems are not disrupted, procedures for notifying system owners of vulnerable government systems, and the range of techniques that can be used during testing of FCEB Information Systems. The Director of CISA shall provide quarterly reports to the APNSA and the Director of OMB regarding actions taken under section 1705 of Public Law 116–283.

(j) To ensure alignment between Department of Defense Information Network (DODIN) directives and FCEB Information Systems directives, the Secretary of Defense and the Secretary of Homeland Security, in consultation with the Director of OMB, shall:

(i) within 60 days of the date of this order, establish procedures for the Department of Defense and the Department of Homeland Security to immediately share with each other Department of Defense Incident Response Orders or Department of Homeland Security Emergency Directives and Binding Operational Directives applying to their respective information networks;

(ii) evaluate whether to adopt any guidance contained in an Order or Directive issued by the other Department, consistent with regulations concerning sharing of classified information; and

(iii) within 7 days of receiving notice of an Order or Directive issued pursuant to the procedures established under subsection (j)(i) of this section, notify the APNSA and Administrator of the Office of Electronic Government within OMB of the evaluation described in subsection (j)(ii) of this section, including a determination whether to adopt guidance issued by the other Department, the rationale for that determination, and a timeline for application of the directive, if applicable.

Sec. 8. *Improving the Federal Government's Investigative and Remediation Capabilities.* (a) Information from network and system logs on Federal Information Systems (for both on-premises systems and connections hosted by third parties, such as CSPs) is invaluable for both investigation and remediation purposes. It is essential that agencies and their IT service providers collect and maintain such data and, when necessary to address a cyber incident on FCEB Information Systems, provide them upon request to the Secretary of Homeland Security through the Director of CISA and to the FBI, consistent with applicable law.

(b) Within 14 days of the date of this order, the Secretary of Homeland Security, in consultation with the Attorney General and the Administrator of the Office of Electronic Government within OMB, shall provide to the Director of OMB recommendations on requirements for logging events and retaining other relevant data within an agency's systems and networks. Such recommendations shall include the types of logs to be maintained, the time periods to retain the logs and other relevant data, the time periods for agencies to enable recommended logging and security requirements, and how to protect logs. Logs shall be protected by cryptographic methods to ensure integrity once collected and periodically verified against the hashes throughout their retention. Data shall be retained in a manner consistent with all applicable privacy laws and regulations. Such recommendations shall also be considered by the FAR Council when promulgating rules pursuant to section 2 of this order.

(c) Within 90 days of receiving the recommendations described in subsection (b) of this section, the Director of OMB, in consultation with the Secretary of Commerce and the Secretary of Homeland Security, shall formulate policies for agencies to establish requirements for logging, log retention, and log management, which shall ensure centralized access and visibility for the highest level security operations center of each agency.

(d) The Director of OMB shall work with agency heads to ensure that agencies have adequate resources to comply with the requirements identified in subsection (c) of this section.

(e) To address cyber risks or incidents, including potential cyber risks or incidents, the proposed recommendations issued pursuant to subsection (b) of this section shall include requirements to ensure that, upon request, agencies provide logs to the Secretary of Homeland Security through the Director of CISA and to the FBI, consistent with applicable law. These requirements should be designed to permit agencies to share log information, as needed and appropriate, with other Federal agencies for cyber risks or incidents.

Sec. 9. National Security Systems. (a) Within 60 days of the date of this order, the Secretary of Defense acting through the National Manager, in coordination with the Director of National Intelligence and the CNSS, and in consultation with the APNSA, shall adopt National Security Systems requirements that are equivalent to or exceed the cybersecurity requirements set forth in this order that are otherwise not applicable to National Security Systems. Such requirements may provide for exceptions in circumstances necessitated by unique mission needs. Such requirements shall be codified in a National Security Memorandum (NSM). Until such time as that NSM is issued, programs, standards, or requirements established pursuant to this order shall not apply with respect to National Security Systems.

(b) Nothing in this order shall alter the authority of the National Manager with respect to National Security Systems as defined in National Security Directive 42 of July 5, 1990 (National Policy for the Security of National Security Telecommunications and Information Systems) (NSD-42). The FCEB network shall continue to be within the authority of the Secretary of Homeland Security acting through the Director of CISA.

Sec. 10. Definitions. For purposes of this order:

(a) the term “agency” has the meaning ascribed to it under 44 U.S.C. 3502.

(b) the term “auditing trust relationship” means an agreed-upon relationship between two or more system elements that is governed by criteria for secure interaction, behavior, and outcomes relative to the protection of assets.

(c) the term “cyber incident” has the meaning ascribed to an “incident” under 44 U.S.C. 3552(b)(2).

(d) the term “Federal Civilian Executive Branch Agencies” or “FCEB Agencies” includes all agencies except for the Department of Defense and agencies in the Intelligence Community.

(e) the term “Federal Civilian Executive Branch Information Systems” or “FCEB Information Systems” means those information systems operated by Federal Civilian Executive Branch Agencies, but excludes National Security Systems.

(f) the term “Federal Information Systems” means an information system used or operated by an agency or by a contractor of an agency or by another organization on behalf of an agency, including FCEB Information Systems and National Security Systems.

(g) the term “Intelligence Community” or “IC” has the meaning ascribed to it under 50 U.S.C. 3003(4).

(h) the term “National Security Systems” means information systems as defined in 44 U.S.C. 3552(b)(6), 3553(e)(2), and 3553(e)(3).

(i) the term “logs” means records of the events occurring within an organization’s systems and networks. Logs are composed of log entries, and each entry contains information related to a specific event that has occurred within a system or network.

(j) the term “Software Bill of Materials” or “SBOM” means a formal record containing the details and supply chain relationships of various components used in building software. Software developers and vendors often create products by assembling existing open source and commercial software components. The SBOM enumerates these components in a product. It is analogous to a list of ingredients on food packaging. An SBOM is useful to those who develop or manufacture software, those who select or purchase software, and those who operate software. Developers often use available open source and third-party software components to create a product; an SBOM allows the builder to make sure those components are up to date and to respond quickly to new vulnerabilities. Buyers can use an SBOM to perform vulnerability or license analysis, both of which can be used to evaluate risk in a product. Those who operate software can use SBOMs to quickly and easily determine whether they are at potential risk of a newly discovered vulnerability. A widely used, machine-readable SBOM format allows for greater benefits through automation and tool integration. The SBOMs gain greater value when collectively stored in a repository that can be easily queried by other applications and systems. Understanding the supply chain of software, obtaining an SBOM, and using it to analyze known vulnerabilities are crucial in managing risk.

(k) the term “Zero Trust Architecture” means a security model, a set of system design principles, and a coordinated cybersecurity and system management strategy based on an acknowledgement that threats exist both inside and outside traditional network boundaries. The Zero Trust security model eliminates implicit trust in any one element, node, or service and instead requires continuous verification of the operational picture via real-time information from multiple sources to determine access and other system responses. In essence, a Zero Trust Architecture allows users full access but only to the bare minimum they need to perform their jobs. If a device is compromised, zero trust can ensure that the damage is contained. The Zero Trust Architecture security model assumes that a breach is inevitable or has likely already occurred, so it constantly limits access to only what is needed and looks for anomalous or malicious activity. Zero Trust Architecture embeds comprehensive security monitoring; granular risk-based access controls; and system security automation in a coordinated manner throughout all aspects of the infrastructure in order to focus on protecting data in real-time within a dynamic threat environment. This data-centric security model allows the concept of least-privileged access to be applied for every access decision, where the answers to the questions of who, what, when, where, and how are critical for appropriately allowing or denying access to resources based on the combination of sever.

Sec. 11. General Provisions. (a) Upon the appointment of the National Cyber Director (NCD) and the establishment of the related Office within the Executive Office of the President, pursuant to section 1752 of Public Law 116–283, portions of this order may be modified to enable the NCD to fully execute its duties and responsibilities.

(b) Nothing in this order 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

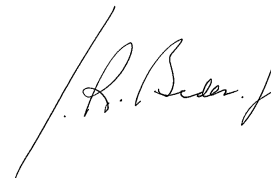
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order 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.

(e) Nothing in this order confers authority to interfere with or to direct a criminal or national security investigation, arrest, search, seizure, or disruption operation or to alter a legal restriction that requires an agency to protect information learned in the course of a criminal or national security investigation.

A handwritten signature in black ink, appearing to read "R. B. Biden, Jr.", with a long, sweeping underline that extends to the left.

THE WHITE HOUSE,
May 12, 2021.

Rules and Regulations

Federal Register

Vol. 86, No. 93

Monday, May 17, 2021

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.

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Part 9801

RIN 3219-AA03

Privacy Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency (CIGIE).

ACTION: Interim final rule; request for comments.

SUMMARY: CIGIE is updating its regulations relating to access, maintenance, disclosure, and amendment of records that are in a CIGIE system of records under the Privacy Act of 1974 (Privacy Act). The purpose of the update is to implement statutory changes in accordance with the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that established the Pandemic Response Accountability Committee (PRAC) within CIGIE. CIGIE is giving concurrent notice of a newly established system of records pursuant to the Privacy Act for the PRAC Accountability Data System (PADS)—CIGIE-6 and this interim final rule. In this interim final rule, CIGIE exempts portions of the new system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative oversight requirements.

DATES: This interim final rule is effective May 17, 2021. Written comments may be submitted by June 16, 2021.

ADDRESSES: You may submit comments identified by “Interim Final Rule/CIGIE-6” by any of the following methods:

1. *Email:* comments@cigie.gov.
2. *Mail:* Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. ATTN: Virginia

Grebasch, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Virginia Grebasch, Senior Counsel, Pandemic Response Accountability Committee, Council of the Inspectors General on Integrity and Efficiency, (202) 292-2600 or comments@cigie.gov.

SUPPLEMENTARY INFORMATION:

Background Information

In accordance with the Privacy Act, CIGIE is proposing in a concurrently published notice a newly established system of records pursuant to the Privacy Act for the PRAC Accountability Data System (PADS)—CIGIE-6. CIGIE proposes this system of records in furtherance of the PRAC’s statutory mandate to conduct oversight of funds disseminated per the CARES Act; the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020; the Families First Coronavirus Response Act; divisions M and N of the Consolidated Appropriations Act of 2021; and any other act primarily making appropriations for coronavirus response and related activities. CIGIE is issuing this Notice of Interim Final Rulemaking to exempt this new system of records from certain provisions of the Privacy Act.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d)(3), CIGIE has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these amendments and for issuing this interim final rule without a delayed effective date. The notice and comment procedures are being waived because these amendments are being made to fulfill the requirements of the CARES Act, which took effect without delay on March 27, 2020. Additionally, these amendments specify exemptions regarding the public’s access to information about themselves maintained by CIGIE. The absence of well-defined exemptions to the Privacy Act regulations could impair confidentiality and privacy rights of those who submit sensitive information to CIGIE through the PRAC and the ability of the PRAC to use that

information to carry out its statutory mission.

Executive Orders 12866 and 13563

In promulgating this amended rule, CIGIE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not “significant” under Executive Order 12866.

Regulatory Flexibility Act

These amended regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These amended regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This amended rule does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 5 CFR Part 9801

Information, Privacy, Privacy Act, Records.

For the reasons set forth in the preamble, CIGIE amends 5 CFR, part 9801, as follows:

PART 9801—PRIVACY ACT REGULATIONS

- 1. The authority citation for part 9801 is revised to read as follows:

Authority: Section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; 5 U.S.C. 301, 552a; 31 U.S.C. 9701; Sec. 15010, Pub. L. 116-136, 134 Stat. 281.

- 2. Amend § 9801.103 by adding paragraph (i) to read as follows:

§ 9801.103 Definitions.

* * * * *

(i) *PRAC* means the Pandemic Response Accountability Committee established under Section 15010 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281.

■ 3. Amend § 9801.401 by adding paragraph (c) to read as follows:

§ 9801.401 Exemptions.

* * * * *

(c) *Specific system of records exempted under (j)(2), (k)(1), and (k)(2).* The system of records maintained in connection with PRAC Accountability Data System (CIGIE–6), is subject to general exemption under 5 U.S.C. 552a(j)(2) and the specific exemptions under 5 U.S.C. 552a(k)(1) and (2). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by CIGIE, at the sole discretion of CIGIE, as appropriate.

(1) Pursuant to the provisions of 5 U.S.C. 552a(j)(2), CIGIE–6 is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G)–(H), (e)(5), and (e)(8); (f); and (g).

(2) Pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (2), CIGIE–6 is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1) and (e)(4)(G)–(H); and (f).

(3) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subjects of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only CIGIE, through the PRAC, but also by external agencies such as Federal Offices of Inspector General. Because release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly

classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subjects of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation and of the nature and scope of the information and evidence obtained as to their activities. Such awareness by the subjects could prevent the successful completion of an investigation and/or lead to the improper influencing of witnesses, the destruction of evidence, or fabricated testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of CIGIE through the PRAC for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal, or other law enforcement investigation, case, or matter, including investigations in which use is made of classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, CIGIE, through the PRAC may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the PRAC should retain this information, as it may aid in establishing patterns of criminal activity and can provide valuable leads for

Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator that relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subjects of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subjects of an investigation cannot be required to provide information to investigators, and information relating to their illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subjects of the investigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subjects of an investigation with substantial information which could impede or compromise the investigation.

(vii) From subsection (e)(4)(G)–(I) because this system of records is exempt from the access provisions of subsection (d).

(viii) From subsection (e)(5) because the application of this provision may prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, and thereby impede effective law enforcement.

(ix) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subjects of an investigation and could reveal

investigative techniques, procedures, or evidence.

(x) From subsection (f) because CIGIE's rules are inapplicable to those portions of the system that are exempt and would place the burden on CIGIE of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(xi) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

Dated: May 12, 2021.

Allison C. Lerner,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

[FR Doc. 2021-10375 Filed 5-13-21; 4:15 pm]

BILLING CODE 6820-C9-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2020-0274]

RIN 3150-AK57

List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 17

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of June 7, 2021, for the direct final rule that was published in the **Federal Register** on March 24, 2021. This direct final rule amended the TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System listing in the “List of approved spent fuel storage casks” to include Renewed Amendment No. 17 to Certificate of Compliance No. 1004. Renewed Amendment No. 17 revises the certificate of compliance technical specifications to add Heat Load Zoning Configurations 11–13 for the 61BTH

Type 2 dry shielded canister and change the maximum assembly heat load from 1.2kW to 1.7kW.

DATES: The effective date of June 7, 2021, for the direct final rule published March 24, 2021 (86 FR 15563), is confirmed.

ADDRESSES: Please refer to Docket ID NRC-2020-0274 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0274. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML20308A485. The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML21109A325.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexa Sieracki, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7509; email: Alexa.Sieracki@nrc.gov.

SUPPLEMENTARY INFORMATION: On March 24, 2021 (86 FR 15563), the NRC published a direct final rule amending its regulations in part 72 of title 10 of

the *Code of Federal Regulations* to revise the TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System listing within the “List of approved spent fuel storage casks” to include Renewed Amendment No. 17 to Certificate of Compliance No. 1004. Renewed Amendment No. 17 revises the certificate of compliance technical specifications to 1) add Heat Load Zoning Configurations 11–13 for the 61BTH Type 2 dry shielded canister and 2) change the maximum assembly heat load from 1.2kW to 1.7kW. This amendment also makes minor clarifications to the certificate of compliance.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on June 7, 2021. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: May 11, 2021

For the Nuclear Regulatory Commission.

Cindy K. Bladley,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021-10281 Filed 5-14-21; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1038; Project Identifier MCAI-2020-00569-E; Amendment 39-21496; AD 2021-08-02]

RIN 2120-AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) Arriel 2D and Arriel 2E model turboshaft engines. This AD was prompted by the manufacturer revising the maintenance and overhaul manuals to introduce new or more restrictive airworthiness limitations and maintenance tasks. This AD requires the replacement of certain critical parts before reaching their published in-service life limits, performing scheduled

maintenance tasks before reaching their published periodicity, and performing unscheduled maintenance tasks when the engine meets certain conditions. As a terminating action, this AD requires operators to revise the airworthiness limitation section (ALS) of their existing approved aircraft maintenance program (AMP) by incorporating the revised airworthiness limitations and maintenance tasks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 21, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 21, 2021.

ADDRESSES: For service information identified in this final rule, contact Safran Helicopter Engines, S.A., 64511 Bordes—Cedex, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. 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 (781) 238-7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1038.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1038; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7134; fax: (781) 238-7199; email: wego.wang@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would

apply to all Safran Arriel 2D and Arriel 2E model turboshaft engines. The NPRM published in the **Federal Register** on November 30, 2020 (85 FR 76492). The NPRM was prompted by the manufacturer revising the maintenance and overhaul manuals to introduce new or more restrictive airworthiness limitations and maintenance tasks. In the NPRM, the FAA proposed to require the replacement of certain critical parts before reaching their published in-service life limits, performing scheduled maintenance tasks before reaching their published periodicity, and performing unscheduled maintenance tasks when the engine meets certain conditions specified in the applicable Safran Arriel maintenance manual (MM) chapter. As a terminating action, the NPRM proposed to require operators to revise the ALS of their existing approved AMP by incorporating the revised airworthiness limitations and maintenance tasks. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018-0273, dated December 13, 2018 (referred to after this as “the MCAI”), to address the unsafe condition on these products. The MCAI states:

The airworthiness limitations and maintenance tasks for the SAFRAN ARRIEL 2D, ARRIEL 2E and ARRIEL 2N engines, which are approved by EASA, are currently defined and published in the SAFRAN ARRIEL 2 Maintenance and Overhaul Manuals, as applicable. These instructions have been identified as mandatory for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

SAFRAN recently revised the applicable Maintenance and Overhaul Manuals (the applicable ALS), introducing new and/or more restrictive airworthiness limitations and maintenance tasks.

For the reason described above, this [EASA] AD requires accomplishment of the actions specified in the applicable ALS.

You may obtain further information by examining the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1038.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Section 05-10-00, Airworthiness Limitations, of Chapter 05, Airworthiness Limitations—Frequencies—Inspections, of the Safran Helicopter Engines ARRIEL 2D Maintenance Manual, Volume 1, No. X 292 R1 450 2, Update No. 20, dated June 15, 2020. Safran Helicopter Engines ARRIEL 2D Maintenance Manual No. X292 R1 450 2 identifies the terms used in tables for limits and mandatory maintenance tasks, usage counters of the engine log book, life limits for life-limited parts, and mandatory inspection tasks to be carried out to reach the airworthiness objectives on Safran Arriel 2D model engines.

The FAA reviewed Section 05-10-00, Airworthiness Limitations, of Chapter 05, Airworthiness Limitations—Frequencies—Inspections, of the Safran Helicopter Engines ARRIEL 2E Maintenance Manual No. X 292 R2 300 2, Update No. 16, dated June 15, 2020. Safran Helicopter Engines ARRIEL 2E Maintenance Manual No. X292 R2 300 2 identifies the terms used in tables for limits and mandatory maintenance tasks, usage counters of the engine log book, life limits for life-limited parts, and mandatory inspection tasks to be carried out to reach the airworthiness objectives on Safran Arriel 2E model engines.

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**.

Costs of Compliance

The FAA estimates that this AD affects 426 engines installed on helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace critical parts	12 work-hours × \$85 per hour = \$1,020	\$1,152	\$2,172	\$925,272
Perform maintenance tasks	1 work-hour × \$85 per hour = \$85	1,152	1,237	526,962
Revise the ALS and AMP	1 work-hour × \$85 per hour = \$85	0	85	36,210

The FAA estimates the following costs to do any necessary corrective actions that would be required based on

the results of the mandated maintenance tasks. The agency has no way of

determining the number of aircraft that might need these actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Perform corrective action	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

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021-08-02 Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.): Amendment 39-21496; Docket No. FAA-2020-1038; Project Identifier MCAI-2020-00569-E.

(a) Effective Date

This airworthiness directive (AD) is effective June 21, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Safran Helicopter Engines, S.A. (Safran) (Type Certificate previously held by Turbomeca, S.A.) Arriel 2D and Arriel 2E model turboshaft engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the maintenance and overhaul manuals to introduce new or more restrictive airworthiness limitations and

maintenance tasks. The FAA is issuing this AD to prevent failure of the engine. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Replace each critical part before reaching the in-service life limits specified in paragraph 1.C., "Table of authorized in-service life limits for the ARRIEL 2D," or "Table of authorized in-service life limits for the ARRIEL 2E," Chapter 05-10-00 of the Safran ARRIEL Maintenance Manual (MM) for that engine.

(2) Before reaching the periodicity specified in paragraph 1., "Tables of Mandatory Maintenance Tasks," table D., "Scheduled inspection," Chapter 05-10-00 of the Safran ARRIEL MM for that engine, perform all maintenance tasks specified in table D.

(3) When the engine meets the conditions specified in paragraph 1., "Tables of Mandatory Maintenance Tasks," table E., "Unscheduled inspection," Chapter 05-10-00 of the Safran ARRIEL MM for that engine, perform the maintenance tasks specified in table E.

(4) If, during performance of the maintenance tasks required by paragraph (g)(2) or (3) of this AD, a discrepancy is found, as defined in the applicable airworthiness limitation section (ALS), perform the corrective actions specified in paragraph 1., "Tables of Mandatory Maintenance Tasks," table D., "Scheduled inspection," or table E. "Unscheduled inspection," Chapter 05-10-00 of the Safran ARRIEL MM for the engine.

(5) If no compliance time is identified in Chapter 05-10-00 of the Safran ARRIEL MM, perform the corrective action before further flight.

(h) Exception to Paragraphs (g)(2) and (3)

Where the applicable Safran ARRIEL MM chapters provide instructions to send the Module 03 to a Safran Helicopter Engines-approved repair center, the operator may choose to send the Module 03 to any FAA-approved repair center capable of performing the required actions.

(i) Mandatory Terminating Action

As terminating action to the requirements in paragraph (g) of this AD, within 365 days after the effective date of this AD, revise the ALS of the existing approved aircraft maintenance program (AMP) by incorporating:

(i) Task 05-10-00-150-801-A01, "Airworthiness Limitations—General," from the applicable Safran ARRIEL MM chapter.

(ii) Task 05-10-00-200-801-A01, "Airworthiness Limitations—Authorized In-Service Life Limits," from the applicable Safran ARRIEL MM chapter.

(iii) Task 05-10-10-200-801-A01, "Airworthiness Limitations—Tables of Mandatory Maintenance Tasks," from the applicable Safran ARRIEL MM chapter.

(j) Definitions

(1) For the purpose of this AD, a "critical part" is a part identified in paragraph 1.C., "Table of authorized in-service life limits for the ARRIEL 2D," or "Table of authorized in-service life limits for the ARRIEL 2E," Chapter 05-10-00 of the Safran ARRIEL MM for that engine.

(2) For the purpose of this AD, the "Chapter 05-10-00 of the Safran ARRIEL MM" is:

(i) Chapter 05-10-00 of Safran Aircraft Engines ARRIEL 2D MM No. X292 R1 450 2, Update No. 20, dated June 15, 2020; or

(ii) Chapter 05-10-00 of Safran Aircraft Engines ARRIEL 2E MM No. X292 R2 300 2, Update No. 16, dated June 15, 2020.

(3) For the purpose of this AD, the "approved maintenance program" is defined as the basis for which the operator ensures the continuing airworthiness of each operated helicopter.

(k) Credit for Previous Actions

(1) For affected Safran Arriel 2D model turboshaft engines, you may take credit for revising the ALS of the existing approved AMP that is required by paragraph (i) of this AD if you incorporated the tasks before the effective date of this AD using Chapter 05-10-00 of Safran ARRIEL 2D MM No. X292 R1 450 2, Update No. 19, dated December 30, 2019.

(2) For affected Safran Arriel 2E model turboshaft engines, you may take credit for revising the ALS of the existing approved AMP that is required by paragraph (i) of this AD if you incorporated the tasks before the effective date of this AD using Chapter 05-10-00 of Safran ARRIEL 2E MM No. X292 R2 300 2, Update No. 15, dated December 30, 2019.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14

CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: ANE-AD-AMOC@faa.gov.

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

(m) Related Information

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7134; fax: (781) 238-7199; email: wego.wang@faa.gov.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018-0273, dated December 13, 2018, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA-2020-1038.

(n) Material Incorporated by Reference

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

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

(i) Section 05-10-00, Airworthiness Limitations, of Chapter 05, Airworthiness Limitations—Frequencies—Inspections, of the Safran Helicopter Engines ARRIEL 2D Maintenance Manual, Volume 1, No. X 292 R1 450 2, Update No. 20, dated June 15, 2020.

(ii) Section 05-10-00, Airworthiness Limitations, of Chapter 05, Airworthiness Limitations—Frequencies—Inspections, of the Safran Helicopter Engines ARRIEL 2E Maintenance Manual, Volume 1, No. X 292 R2 300 2, Update No. 16, dated June 15, 2020.

(3) For service information identified in this AD, contact Safran Helicopter Engines, S.A., 64511 Bordes—Cedex, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(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 (781) 238-7759.

(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: fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-10310 Filed 5-14-21; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1112, 1130, and 1232**

[Docket No. CPSC-2015-0029]

Safety Standard for Children's Folding Chairs and Stools

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2017, the U.S. Consumer Product Safety Commission (CPSC) issued a consumer product safety standard for children's folding chairs and stools. The standard incorporated by reference the applicable ASTM voluntary standard. The Consumer Product Safety Improvement Act (CPSIA) sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Since 2017, ASTM has revised the voluntary standard for children's folding chairs and stools twice. Consistent with the CPSIA update process, this direct final rule updates the mandatory standard for children's folding chairs and stools to incorporate by reference ASTM's 2021 version of the voluntary standard.

DATES: The rule is effective on August 21, 2021, unless we receive significant adverse comment by June 16, 2021. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of August 21, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0029, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through <https://www.regulations.gov> and as described below. The CPSC encourages you to submit electronic comments by using

the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier

Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you can email such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions received must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2015-0029, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC's durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section

104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. ASTM Standard for Children's Chairs and Stools

On December 15, 2017, the Commission published a final rule issuing a mandatory standard for children's folding chairs and stools that incorporated by reference the voluntary standard in effect at that time, ASTM F2613-17a, *Standard Consumer Specification for Children's Chairs and Stools*. 82 FR 59505. The ASTM standard for children's folding chairs and stools, ASTM F2613, *Standard Consumer Safety Specification for Children's Chairs and Stools*, applies to children's folding chairs and stools with a seat height of 15 inches or less, and equipped with or without a rocking base. These chairs are intended to be used by a single child who can get in and out of the product unassisted. The standard was codified in the Commission's regulations at 16 CFR part 1232. Since publication of ASTM F2613-17a, the original mandatory standard, ASTM has published two revisions to ASTM F2613. ASTM F2613-19 was approved and published in November 2019. On April 1, 2020, the Commission issued a direct final rule updating the incorporation by reference to ASTM F2613-19 as the mandatory standard. 85 FR 18111. In February 2021, ASTM approved and published ASTM F2613-21. ASTM officially notified the Commission of this revision on February 22, 2021. The rule is incorporating by reference ASTM F2613-21 as the mandatory standard.

B. Revisions to the ASTM Standard

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM's revision of a

voluntary standard that is a CPSC mandatory standard "does not improve the safety of the consumer product covered by the standard," the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F2613-21 are neutral or improve the safety of children's folding chairs and stools. Therefore, the Commission will allow the revised voluntary standard ASTM F2613-21 to become effective as a mandatory consumer product safety standard under the statute, effective August 21, 2021.

Differences Between 16 CFR Part 1232 and ASTM F2613-21

In February 2021, ASTM revised ASTM F2613-19. The resulting standard, ASTM F2613-21, includes the following changes:

Substantive Change

ASTM F2613-21 makes one substantive change to the standard by updating the definition of stools in the standard to include ottomans. The Commission finds the substantive change made in ASTM F2613-21 to be an improvement to safety as it clarifies the standard's scope to include ottomans, a product previously not clearly subject to the mandatory standard.

Non-Substantive Changes

Other changes to the standard were minor or editorial in nature as described below.

- Clarification that infant/toddler rockers are not included within the scope of the standard, because infant/toddler rockers are subject to a different voluntary standard, ASTM F3084-20, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers*.

- Removal of a previous version of a locking test method that is no longer referenced in ASTM F2613-21. The ASTM F2613-21 standard contains the current latching and locking test method that is similar to a previous version of a locking test method. Although removal of the previous version of the test method was included on an ASTM ballot, when ASTM published F2613-19, the previous locking test method was inadvertently retained in the test method section of the standard. There are no performance requirements associated with the previous locking testing method and the test method is not currently being used for testing products to the standard. Therefore, ASTM F2613-21 removed this unused test method.

The Commission finds that all of the non-substantive changes in ASTM F2613–21 are editorial in nature, and therefore, neutral regarding safety, and thus do not affect the safety of children’s folding chairs and stools.

C. Revisions to Parts 1112, 1130, and 1232

CPSC has received an inquiry from a testing laboratory regarding whether 16 CFR part 1232 was intended to apply to non-folding stools, because the title of the Part did not specifically state it applied to “folding chairs and folding stools.” Previous discussions in the preambles of the NPR (80 FR 63155, October 19, 2015) and the final rule (82 FR 59505, December 15, 2017) for the folding chairs and stools standard clearly indicate that folding stools fell within the scope of the mandatory standard. To avoid any misinterpretation regarding the scope of the standard, the Commission is amending the title of the rule to read “Safety standard for children’s folding chairs and children’s folding stools” and the title of the requirements in section 1232.2 to read “Requirements for children’s folding chairs and children’s folding stools” to remove any ambiguity regarding whether the standard applies to children’s folding stools versus non-folding stools. The rule also amends section 1232.1 regarding scope to state it establishes a standard for “children’s folding chairs and children’s folding stools.” For consistency, the rule makes the corresponding amendment to the notice of requirements listed in section 1112.15(b)(43) of 16 CFR part 1112 to read “16 CFR part 1232, Safety Standard for Children’s Folding Chairs and Children’s Folding Stools”. The rule also makes the corresponding amendment to the definition in section 1130.2(a)(13) of 16 CFR part 1130 to read “Children’s folding chairs and children’s folding stools.”

D. Incorporation by Reference

Section 1232.2 of the direct final rule incorporates by reference ASTM F2613–21. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR’s requirements, section A of this preamble

summarizes the major provisions of the ASTM F2613–21 standard that the Commission incorporates by reference into 16 CFR part 1232. The standard is reasonably available to interested parties, and interested parties can purchase a copy of ASTM F2613–21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; www.astm.org. Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2613–21 is available for viewing on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC’s Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: cpsc-os@cpsc.gov.

E. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children’s products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are “consumer product safety standards.” Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because children’s folding chairs and stools are children’s products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(d) of the CPSIA.

F. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSIA, the

Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing children’s folding chairs and stools (82 FR 59505, December 15, 2017). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing children’s folding chairs and stools to 16 CFR part 1232. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified at 16 CFR part 1112.

None of the changes to ASTM F2613–21 would impact a CPSC accepted laboratory’s competence to be able to conduct testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2613–19 to be competent to conduct testing to ASTM F2613–21 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected in the normal course of renewing their accreditation to update the scope of the testing laboratories’ accreditation to reflect the revised standard.

G. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F2613–21 to become CPSC’s new standard. The purpose of

this direct final rule is merely to update the reference in the Code of Federal Regulations (CFR) so that it reflects accurately the version of the standard that takes effect by statute. The rule updates the reference in the CFR, but under the CPSIA, ASTM F2613–21 takes effect as the new CPSC standard for children's folding chairs and children's folding stools, even if the Commission did not issue this rule. Additionally, the title and text of Part 1232 is revised to clarify the scope of the standard regarding children's folding stools, with corresponding revisions to the references in Parts 1112 and 1130 for consistency. Thus, public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on August 21, 2021. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute and corresponding changes to Part 1232 and two other parts for consistency and clarity.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

I. Paperwork Reduction Act

The standard for children's folding chairs and stools contains information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions to the standard made no changes to that section of the standard. Thus, the revisions will have no effect on the information-collection requirements related to the standard.

J. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision to be “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

L. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. The Commission is taking neither of those actions with respect to the standard for children's folding chairs and stools. Therefore, ASTM F2613–21 will automatically take effect as the new mandatory standard for children's folding chairs and stools on August 21, 2021, which is 180 days after the Commission received notice of the revision on February 22, 2021.

M. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Consumer protection, Incorporation by reference, Third party conformity assessment body requirements, Audit.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1232

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated in the preamble, the Commission amends title 16 CFR chapter II as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

■ 2. Amend § 1112.15 by revising paragraph (b)(43) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(43) 16 CFR part 1232, Safety Standard for Children’s Folding Chairs and Children’s Folding Stools.

* * * * *

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

■ 3. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

■ 4. Amend § 1130.2 by revising paragraph (a)(13) to read as follows:

§ 1130.2 Definitions.

* * * * *

(a) * * *

(13) Children’s folding chairs and children’s folding stools;

* * * * *

■ 5. Revise part 1232 to read as follows:

PART 1232—SAFETY STANDARD FOR CHILDREN’S FOLDING CHAIRS AND CHILDREN’S FOLDING STOOLS

Sec.

1232.1 Scope.

1232.2 Requirements for children’s folding chairs and children’s folding stools.

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112–28, 125 Stat. 273.

§ 1232.1 Scope.

This part establishes a consumer product safety standard for children’s folding chairs and children’s folding stools.

§ 1232.2 Requirements for children’s folding chairs and children’s folding stools.

Each children’s folding chair and children’s folding stool shall comply with all applicable provisions of ASTM F2613–21, *Standard Consumer Safety Specification for Children’s Chairs and Stools*, approved on February 1, 2021. The Director of the Federal Register approves this incorporation by reference

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; www.astm.org. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7479, email: cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2021–10293 Filed 5–14–21; 8:45 am]

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2204

Rules Implementing the Equal Access to Justice Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (“OSHR”) is amending its procedural rules implementing the Equal Access to Justice Act (“EAJA”). The amendments closely conform with new model rules from the Administrative Conference of the United States.

DATES: Effective May 17, 2021.

FOR FURTHER INFORMATION CONTACT:

Carter Tellinghuisen, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606–5410 ext. 211, by email at ctellinghuisen@oshrc.gov, or by mail at 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION:

OSHR published a notice of proposed rulemaking on March 8, 2021, 86 FR 13251, which announced revisions to the Commission’s rules of procedure implementing EAJA, 29 CFR part 2204, and invited interested persons to submit written comments. OSHRC received no public comments. Accordingly, the Commission now adopts the proposed rule as the agency’s final rule, with one

technical amendment to correct a typographical error in § 2204.301(c).

I. Revisions to Part 2204

EAJA directs Federal agencies to consult with the Administrative Conference of the United States (“ACUS”) to develop procedural rules to implement the provisions of the statute. 5 U.S.C. 504(c)(1). On August 8, 2019, ACUS published Revised Model Rules for Implementation of the Equal Access to Justice Act to reflect subsequent amendments to the law and practice, and to promote greater accuracy and clarity. 84 FR 38934 (August 8, 2019). The Commission is amending its procedural rules in line with the amendments made by ACUS to the model rules.

ACUS summarized and explained its amendments in the preamble to the amended model rules and in Administrative Conference Recommendation 2019–4. 84 FR 38934, 38934 (August 8, 2019); 84 FR 38927, 38933 (August 8, 2019). To the extent applicable, the Commission relies upon the rationale ACUS provided in those documents as the basis for the amendments to the Commission’s rules.

In addition, the Commission has determined that an adjustment for increases in the cost of living is appropriate in considering an applicant’s request for attorney or agent fees. Accordingly, pursuant to 5 U.S.C. 504(b)(1)(A), the Commission revises §§ 2204.303 and 2204.406(c)(2) to allow an applicant to request, with supporting documentation, an increase in hourly fees to account for inflation as measured by the consumer price index in the relevant locality.

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: The Review Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: Pursuant to 5 U.S.C. 605(a), a regulatory flexibility analysis is not required because these rules concern “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” under 5 U.S.C. 553(b).

Paperwork Reduction Act of 1995:

The Review Commission has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval

of the Office of Management and Budget (OMB).

Congressional Review Act: These revisions do not constitute a “rule,” as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

■ For the reasons set forth in the preamble, the Review Commission revises 29 CFR part 2204 to read as follows:

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Subpart A—General Provisions

Sec.
2204.101 Scope of this part.

Subpart B—Definitions

2204.201 Definitions.

Subpart C—EAJA Application

2204.301 Application requirements.
2204.302 Net worth exhibit.
2204.303 Documentation of fees and expenses.

Subpart D—Procedures for Considering Applications

2204.401 Filing and service of documents.
2204.402 Answer to application.
2204.403 Reply.
2204.404 Settlement.
2204.405 Further proceedings.
2204.406 Decision.
2204.407 Commission review.
2204.408 Judicial review.
2204.409 Stay of decision concerning award.
2204.410 Waiver.
2204.411 Payment of award.

Authority: 5 U.S.C. 504.

Subpart A—General Provisions

§ 2204.101 Scope of this part.

The Equal Access to Justice Act, 5 U.S.C. 504 (called “EAJA” in this part), provides for the award of attorney or agent fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before the Occupational Safety and Health Review Commission. An eligible party may receive an award when it prevails over the Secretary of Labor, unless the Secretary’s position in the proceeding was substantially justified or special circumstances make an award unjust. Alternatively, an eligible party,

even if not a prevailing party, may receive an award under 5 U.S.C. 504(a)(4) when it successfully defends against an excessive demand made by the Secretary.

Subpart B—Definitions

§ 2204.201 Definitions.

For the purposes of this part:
Adversary adjudication means an adjudication under 5 U.S.C. 554 and 29 U.S.C. 659(c) in which the position of the Secretary is represented by counsel or otherwise, subject to certain exclusions set forth in 5 U.S.C. 504(b)(1)(C).

Agent means any person other than an attorney who represents a party in a proceeding before the Commission pursuant to § 2200.22 of this chapter.

Commission means the Occupational Safety and Health Review Commission.

Demand means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty:

- (1) In the administrative complaint; or
- (2) Elsewhere when accompanied by an express demand for a lesser amount.

Excessive demand means a demand by the Secretary, in an adversary adjudication arising from the Secretary’s action to enforce a party’s compliance with a statutory requirement that is substantially in excess of the decision of the judge or Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case.

Final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, become final and unappealable, both within the agency and to the courts.

Judge means the Administrative Law Judge appointed under 29 U.S.C. 661(j) who presided over the adversary adjudication or presides over an EAJA proceeding.

Party means a party, as defined in 5 U.S.C. 551(3), who is:

- (1) An individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated; or
- (2) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was

initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, may be a party regardless of the net worth of such organization or cooperative association. For purposes of 5 U.S.C. 504(a)(4), “party” also includes a small entity as defined in 5 U.S.C. 601.

Position of the Secretary means, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based, except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

Secretary means the Secretary of Labor.

Subpart C—EAJA Application

§ 2204.301 Application requirements.

(a) A party seeking an award under EAJA shall file an application with the judge that conducted the adversarial adjudication within 30 days after the final disposition of the adversary adjudication.

(b) The application shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Secretary that the applicant alleges was not substantially justified; or, if the applicant has not prevailed, shall show that the Secretary’s demand was substantially in excess of the decision of the judge or Commission and was unreasonable when compared with that decision under the facts and circumstances of that case. The application shall also identify the Secretary’s position(s) in the proceeding that the applicant alleges was (were) not substantially justified or the Secretary’s demand that is alleged to be excessive and unreasonable. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and briefly describe the type and purpose of its organization or business.

(c) The application shall also show that the applicant meets the definition of “party” in § 2204.201, including adequate documentation of its net worth, as set forth in § 2204.302.

(d) The application shall state the amount of fees and expenses for which an award is sought, subject to the requirements and limitations as set forth

in 5 U.S.C. 504(b)(1)(A), with adequate documentation as set forth in § 2204.303.

(e) The application shall be signed by the applicant or an authorized officer, attorney, or agent of the applicant. It shall also contain or be accompanied by a written verification under penalty of perjury that the information provided in the application is true and correct.

§ 2204.302 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, cooperative association, or, in the case of an application for an award related to an allegedly excessive demand by the Secretary, a small entity as that term is defined by 5 U.S.C. 601(6), shall provide with its application a detailed exhibit showing the net worth of the applicant as required by § 2204.301(c) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under excessive demand as defined in § 2204.201. The judge or Commission may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may request that the documents be filed under seal or otherwise be treated as confidential, pursuant to §§ 2200.8 and 2200.52 of this chapter.

§ 2204.303 Documentation of fees and expenses.

The application shall be accompanied by adequate documentation of the fees and other expenses incurred after the initiation of the adversary adjudication, including, but not limited to, the reasonable cost of any study, analysis, engineering report, test, or project. An application seeking an increase in fees to account for inflation pursuant to § 2200.406 of this chapter shall also include adequate documentation of the change in the consumer price index for the attorney or agent's locality. With respect to a claim for fees and expenses involving an excessive demand by the Secretary, the application shall be accompanied by adequate documentation of such fees and expenses incurred after initiation of the adversary adjudication for which an award is sought attributable to the portion of the demand alleged to be excessive and unreasonable. A separate

itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The judge or Commission may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

Subpart D—Procedures for Considering Applications

§ 2204.401 Filing and service of documents.

Any application for an award, or any accompanying documentation related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8 of this chapter, except as provided in § 2204.302(b) for confidential financial information.

§ 2204.402 Answer to application.

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application. Unless the Secretary requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Secretary and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the judge upon request.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Secretary's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Secretary shall include with the answer either supporting affidavits or a request for further proceedings under § 2204.405.

§ 2204.403 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting

affidavits or a request for further proceedings under § 2204.405.

§ 2204.404 Settlement.

The applicant and the Secretary may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying adversary adjudication, or after the adversary adjudication has been concluded, in accordance with the Commission's standard settlement procedures as set forth in § 2200.120 of this chapter. If a prevailing party and the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement of an underlying proceeding provides that each side shall bear its own expenses and the settlement is accepted, no application may be filed.

§ 2204.405 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the Secretary, or on his or her own initiative, the judge presiding over an EAJA proceeding may, if necessary for a full and fair decision on the application, order the filing of additional written submissions; hold oral argument; or allow for discovery or hold an evidentiary hearing, but only as to issues other than whether the agency's position was substantially justified (such as those involving the applicant's eligibility or substantiation of fees and expenses). Any written submissions shall be made, oral argument held, discovery conducted, and evidentiary hearing held as promptly as possible so as not to delay a decision on the application for fees. Whether or not the position of the Secretary was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request for further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 2204.406 Decision.

The preparation and issuance of decision on the fee application shall be in accordance with § 2200.90 of this chapter.

(a) *For an application involving a prevailing party.* The decision shall include written findings and conclusions on the applicant's

eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if applicable, findings on whether the Secretary's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

(b) *For an application involving an allegedly excessive agency demand.* The decision shall include written findings and conclusions on the applicant's eligibility and an explanation of the reasons why the agency's demand was or was not determined to be substantially in excess of the underlying decision in the matter and whether the Secretary's demand was or was not unreasonable. That determination shall be based upon all the facts and circumstances of the case.

(c) *Awards.* The judge presiding over an EAJA proceeding or the Commission on review may reduce the amount to be awarded, or deny any award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(1) Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) An award for the fee of an attorney or agent under this paragraph (c) shall not exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A), except to account for inflation since the last update of the statute's maximum award upon the request of the applicant as documented in the application pursuant to § 2204.303. An award to compensate an expert witness shall not exceed the highest rate at which the Secretary pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the following shall be considered:

(i) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(ii) The prevailing rate for similar services in the community in which the

attorney, agent, or witness ordinarily perform services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of the party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2204.407 Commission review.

Either the applicant or the Secretary may seek review of the judge's decision on the fee application, and the Commission may grant such a petition for review or direct review of the decision on the Commission's own initiative. Review by the Commission shall be in accordance with §§ 2200.91 and 2200.92 of this chapter.

§ 2204.408 Judicial review.

Judicial review of final decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 2204.409 Stay of decision concerning award.

Any proceedings on an application for fees under this part shall be automatically stayed until the adversary adjudication has become a final disposition.

§ 2204.410 Waiver.

After reasonable notice to the parties, the judge or the Commission may waive, for good cause shown, any provision contained in this part as long as the waiver is consistent with the terms and purpose of the EAJA.

§ 2204.411 Payment of award.

An applicant seeking payment of an award shall submit to the officer designated by the Secretary a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

Cynthia L. Attwood,
Chairman.

Amanda Wood Laihow,
Commissioner.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 536 and 598

Narcotics Trafficking Sanctions Regulations and Foreign Narcotics Kingpin Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Narcotics Trafficking Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations to add or amend general licenses with respect to payments for legal services, certain transactions for personal maintenance, certain transactions for maintenance of blocked tangible property, and emergency medical services. In addition, OFAC is amending certain prohibitions, definitions, and interpretive sections contained in these sets of regulations. OFAC is also updating certain regulatory provisions and making other technical and conforming edits.

DATES: This rule is effective May 17, 2021.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (www.treasury.gov/ofac).

Background

OFAC administers two sanctions programs with respect to narcotics trafficking. The Narcotics Trafficking Sanctions Regulations, 31 CFR part 536 (NTSR), implement Executive Order (E.O.) 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers" (60 FR 54579, October 24, 1995), as amended by E.O. 13286 of February 28, 2003, "Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security" (68 FR 10619, March 3, 2003), in which the President declared a national emergency, and imposed sanctions, with respect to "the actions

of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad.”

The Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598 (FNKSR), implement the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), which provides authority for the application of sanctions to significant foreign narcotics traffickers and their organizations operating worldwide.

Current Regulatory Action

OFAC is adopting this final rule amending the NTSR and the FNKSR with respect to general licenses for payments for legal services, certain transactions for personal maintenance, certain transactions for maintenance of blocked tangible property, and emergency medical services, as set forth in more detail below. OFAC is also amending certain prohibitions, definitions, and interpretive sections, updating certain regulatory provisions, and making other technical and conforming edits, as also described below.

Payments for legal services. Section 536.506 of the NTSR and § 598.507 of the FNKSR authorize U.S. persons to provide certain legal services to or on behalf of a specially designated narcotics trafficker (SDNT), as defined in § 536.312 and § 598.314, respectively, provided that any payment of professional fees and reimbursement of incurred expenses must be specifically licensed. OFAC is amending the NTSR and the FNKSR to authorize certain permissible payment mechanisms for legal services without the need for a specific license. With these amendments, OFAC incorporates two mechanisms for payment for legal services. As set forth in the regulations, these new mechanisms for the payment of legal services are subject to additional reporting and recordkeeping requirements and other conditions and limitations.

First, new § 536.507 of the NTSR and new § 598.508 of the FNKSR now authorize payments from funds originating outside the United States and that do not come from a U.S. person or any person whose property and interests in property are blocked, other than the person to whom or on whose behalf the authorized legal services are provided.

Second, new § 536.508 of the NTSR and new § 598.509 of the FNKSR now authorize payment of professional fees and reimbursement of incurred expenses from public funds in

connection with authorized legal services rendered on behalf of blocked persons.

Certain transactions for personal maintenance. OFAC also is adding general licenses in new § 536.509 of the NTSR and new § 598.510 of the FNKSR, authorizing SDNTs who are in U.S. custody or incarcerated in the United States to engage in certain personal maintenance transactions. Specifically, these new general licenses authorize SDNTs in U.S. custody or incarcerated in the United States to engage in certain transactions for their maintenance and the maintenance of their spouse or persons who are sharing or who would ordinarily share a common dwelling as a family with them, including receiving goods and services, engaging in employment, and establishing accounts at U.S. financial institutions. These new general licenses are subject to additional reporting and recordkeeping requirements and other conditions and limitations set forth in those sections.

Certain transactions for maintenance of tangible blocked property. OFAC is adding general licenses at new § 536.510 of the NTSR and new § 598.511 of the FNKSR, authorizing SDNTs to make payment for, and receive goods and services for the maintenance of, tangible property blocked pursuant to § 536.201 of the NTSR and § 598.202(a) of the FNKSR, consistent with §§ 536.206 of the NTSR and 598.207 of the FNKSR. These new general licenses are subject to additional reporting and recordkeeping requirements and other conditions and limitations set forth in those sections.

Emergency medical services. OFAC is amending the general license in § 536.511 of the NTSR to expand the existing authorization and adding a general license in new § 598.512 of the FNKSR, each authorizing the provision and receipt of nonscheduled emergency medical services. Revised § 536.511 of the NTSR no longer requires that payment for such services be specifically licensed.

Definitions. OFAC is adding and amending several definitions. To clarify the term *narcotics trafficking* as used in §§ 536.311 and 598.310, OFAC is adding, in new § 536.318 of the NTSR and new § 598.320 of the FNKSR, a definition of the term *finance*. OFAC is also adding, in § 536.319, definitions of the terms *narcotic drug*, *controlled substance*, and *listed chemical*.

OFAC also is amending the definition of *foreign person* in § 536.304 of the NTSR and § 598.305 of the FNKSR to add the qualifier “wherever located” to clarify that the term includes foreign and dual nationals regardless of their

location. OFAC is amending the definition of *specially designated narcotics trafficker* in § 536.312 of the NTSR and § 598.314 of the FNKSR to clarify that these terms include entities directly or indirectly owned 50 percent or more by one or more specially designated narcotics traffickers, whether individually or in the aggregate, as well as updating the definition of the terms *blocked account* and *blocked property* in § 536.301 of the NTSR and § 598.301 of the FNKSR, to add a note referencing the definition of *specially designated narcotics trafficker*. OFAC is adding, in new § 536.319 of the NTSR and new § 598.321 of the FNKSR, a definition of the term *OFAC* to mean the Department of the Treasury’s Office of Foreign Assets Control.

Prohibited transactions and interpretive sections. OFAC is updating the regulatory provisions with respect to prohibited transactions involving blocked property in § 536.201 of the NTSR. OFAC is similarly updating the FNKSR by consolidating two existing sections into revised § 598.202 and removing and reserving § 598.203. In § 536.204 and § 598.204, OFAC is clarifying the terms evasions, attempts, and conspiracies in the NTSR and the FNKSR to be consistent with the definitions of these terms in other OFAC sanctions regulations. In new § 536.410 of the NTSR and new § 598.411 of the FNKSR, OFAC is clarifying that these prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked, and the receipt of any contribution or provision of funds, goods, or services from any such person. Pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the NTSR include an exception to this prohibition for donations of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, because E.O. 12978, as amended, does not include a presidential determination to the contrary.

Updated delegation of authority by the Secretary of the Treasury. This rule also updates the delegation of authority in § 598.803 of the FNKSR to add the Presidential Memorandum of May 15, 2015: Delegation of Functions Under the Foreign Narcotics Kingpin Designation Act and the Presidential Memorandum of May 31, 2013: Delegation of Functions Under Subsection 804(h)(2)(A) of the Foreign Narcotics Kingpin Designation Act.

Other technical and conforming changes. OFAC is updating certain

regulatory provisions and making other technical and conforming changes. OFAC is updating and conforming the language in § 536.203 of the NTSR and § 598.206 of the FNKSR related to the holding of funds in interest-bearing accounts and investment and reinvestment. In new § 536.206 of the NTSR and new § 598.207 of the FNKSR, OFAC is adding a standard provision relating to expenses of maintaining blocked tangible property and liquidation of blocked property. OFAC is updating and combining the definitions of the terms *general license*, *license*, and *specific license* in §§ 536.305, 536.308, and 536.313 of the NTSR and §§ 598.306, 598.308, and 598.315 of the FNKSR, as well as adding § 536.300 to the NTSR and § 598.300 to the FNKSR to clarify that the definitions described in Subpart C of each part apply to the entire part. OFAC is updating the language of and making conforming edits to §§ 598.404, 598.407, and 598.409 of the FNKSR to reference § 598.202 instead of § 598.203. OFAC is also updating the language of § 536.406 in the NTSR and § 598.406 in the FNKSR, including adding a note referencing the emergency medical services authorization. In § 536.506 of the NTSR and § 598.507 of the FNKSR, OFAC is updating regulatory provisions relating to the provision of legal services. Finally, OFAC is updating the authorities citation of the NTSR.

Public Participation

Because the NFSR and the FNKSR involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the NTSR and the FNKSR are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 536

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Currency, Drug traffic control, Foreign investments in U.S., Narcotics trafficking, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Specially designated narcotics traffickers, Transfer of assets.

31 CFR Part 598

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Currency, Drug traffic control, Foreign investments in U.S., Narcotics trafficking, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Significant foreign narcotics traffickers, Specially designated narcotics traffickers, Transfer of assets.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR parts 536 and 598 as follows:

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

- 1. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart B—Prohibitions

- 2. Revise § 536.201 to read as follows:

§ 536.201 Prohibited transactions.

(a) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person, of a specially designated narcotics trafficker are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

- (1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section, other than donations of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering; and
- (2) The receipt of any contribution or provision of funds, goods, or services

from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, a specially designated narcotics trafficker is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) The prohibitions in paragraph (a) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

Note 1 to § 536.201: See § 536.312 and the notes to that section for the definition and information about the public listing of specially designated narcotics traffickers and OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). See § 536.312(d) concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 536.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, and administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

- 3. Revise § 536.203 to read as follows:

§ 536.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 536.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 536.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 536.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to a specially designated narcotics trafficker, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

■ 4. Revise § 536.204 to read as follows:

§ 536.204 Evasions; attempts; conspiracies.

(a) Any transaction on or after the effective date that has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

■ 5. Add § 536.206 to subpart B to read as follows:

§ 536.206 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 536.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 536.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

■ 6. Add § 536.300 to subpart C to read as follows:

§ 536.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

■ 7. Revise § 536.301 to read as follows:

§ 536.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 536.201 held in the name of a specially designated narcotics trafficker, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 536.301: See § 536.312 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more specially designated narcotics traffickers.

■ 8. Revise § 536.304 to read as follows:

§ 536.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), wherever located, or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 536.305 [Removed and Reserved]

■ 9. Remove and reserve § 536.305.

■ 10. Revise § 536.308 to read as follows:

§ 536.308 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

(c) The term *specific license* means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

Note 1 to § 536.308: See § 501.801 of this chapter on licensing procedures.

■ 11. Revise § 536.312 to read as follows:

§ 536.312 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Persons listed in the Annex to Executive Order 12978 of October 24, 1995, as amended;

(b) Foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, Secretary of Homeland Security, and the Secretary of State, because they are found:

(1) To play a significant role in international narcotics trafficking centered in Colombia; or

(2) Materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers;

(c) Persons determined by the Secretary of the Treasury, in consultation with the Attorney General, Secretary of Homeland Security, and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other specially designated narcotics trafficker; and

(d) Entities owned in the aggregate, directly or indirectly, 50 percent or

more by one or more specially designated narcotics traffickers.

Note 1 to § 536.312: The names of persons determined to fall within paragraph (a), (b), or (c) of this section, whose property and interests in property therefore are blocked pursuant to § 536.201, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier “[SDNT].” The SDN List is accessible through the following page on OFAC's website: www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Entities that fall within paragraph (d) of this section are also persons whose property and interests in property are blocked pursuant to this part, whether or not they are identified by OFAC or appear on the SDN List.

Note 2 to § 536.312: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of the property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to § 536.201 also are published in the **Federal Register** and incorporated into the SDN List with the identifier “[BPI–SDNT].”

Note 3 to § 536.312: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

§ 536.313 [Removed and Reserved]

- 12. Remove and reserve § 536.313.
- 13. Add § 536.318 to subpart C to read as follows:

§ 536.318 Finance.

The term *finance* includes engaging in any transaction involving funds, other assets, property, or interest in property, that are derived, obtained, or retained from, directly or indirectly, narcotic drugs, controlled substances, or listed chemicals. This includes the transporting, transmitting, or transferring of any such assets, property, or interests in property that creates the appearance that the funds, assets, or property were legitimately acquired, furthers the illicit activity, conceals or disguises the assets, avoids reporting requirements, or otherwise promotes the carrying on of illicit activity, such as money laundering.

Note 1 to § 536.318: The definition of finance listed above is specific to this part and not any other parts of Chapter 31. See § 536.101.

- 14. Add § 536.319 to subpart C to read as follows:

§ 536.319 Narcotic drug; controlled substance; listed chemical.

The terms *narcotic drug*, *controlled substance*, and *listed chemical* have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

- 15. Add § 536.320 to subpart C to read as follows:

§ 536.320 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

Subpart D—Interpretations

- 16. Revise § 536.406 to read as follows:

§ 536.406 Provision of services.

(a) The prohibitions on transactions contained in § 536.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a specially designated narcotics trafficker.

Note 1 to § 536.406: See §§ 536.506 and 536.511 on licensing policy with regard to the provision of certain legal and emergency medical services.

- 17. Revise § 536.407 to read as follows:

§ 536.407 Offshore transactions involving blocked property.

The prohibitions in § 536.201 on transactions or dealings involving blocked property, as defined in § 536.301, apply to transactions by any U.S. person in a location outside the United States.

- 18. Revise § 536.409 to read as follows:

§ 536.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 536.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including

charge cards, debit cards, or other credit facilities issued by a financial institution to a specially designated narcotics trafficker.

- 19. Add § 536.410 to subpart D to read as follows:

§ 536.410 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, except donations of articles, such as food, clothing, and medicine, intended to relieve human suffering, may be made by, to, or for the benefit of, or received from, a specially designated narcotics trafficker. For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a specially designated narcotics trafficker if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 20. Revise § 536.506 to read as follows:

§ 536.506 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of specially designated narcotics traffickers is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 536.507 or 536.508, which authorize certain payments for legal services; via specific licenses; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative

proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to specially designated narcotics traffickers not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this paragraph. Additionally, U.S. persons who provide services authorized by this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. See § 536.405.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 536.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 536.506: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available

§ 536.507 [Redesignated as § 536.511]

■ 21. Redesignate § 536.507 as § 536.511.

■ 22. Add new § 536.507 to subpart E to read as follows:

§ 536.507 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 536.506(a) to or on behalf of a specially designated narcotics trafficker

is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 536.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph authorizes payments for legal services using funds in which a specially designated narcotics trafficker, or any other person whose property and interests in property are blocked pursuant to any other part of this chapter, or any Executive order or statute has an interest.

(b) Reports. (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method):* OFAC.Regulations.Reports@treasury.gov; or

(ii) *U.S. Mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

■ 23. Add § 536.508 to subpart E to read as follows:

§ 536.508 Payment of legal fees and expenses at public expense.

U.S. persons that are attorneys, law firms, or legal services organizations are authorized to receive payment of professional fees and reimbursement of incurred expenses from public funds for the provision of legal services authorized by § 536.506(a).

■ 24. Add § 536.509 to subpart E to read as follows:

§ 536.509 Certain transactions for maintenance, employment, and related banking services for blocked individuals physically located in the United States.

(a) Individuals who are specially designated narcotics traffickers who are in U.S. custody or incarcerated in jails, prisons, or similar facilities in the United States (“covered individuals”), are authorized to engage in the following transactions within the United States:

(1) Purchasing, making payment for, and receiving goods and services for their maintenance and the maintenance of their spouse or persons who would ordinarily share a common dwelling as a family with them, located in the United States, including food, clothing, housing, medical care, education, transportation, insurance, and utilities;

(2) Obtaining or continuing employment and engaging in all transactions ordinarily incident to such employment, including receipt of salary and benefits;

(3) Establishing accounts with a U.S. financial institution, or a commissary-type account with a prison, jail, or other similar facility, located in the United States, for use in connection with the transactions authorized in paragraph (a)(1) and (a)(2) of this section; and

(4) Receiving and making funds transfers in furtherance of the authorized transactions set forth in paragraphs (a)(1) through (3) of this section from unblocked funds originating within or outside the United States, provided that any funds received may not originate from any individual or entity whose property or interests in property are blocked pursuant to any part of this chapter or any Executive order or statute, other than the covered individual or his or her spouse or persons who would ordinarily share a common dwelling as a family with the covered individual.

(b) Any financial institution that has established any account pursuant to paragraph (a)(3) of this section, excluding commissary-type accounts with prisons, jails, or other similar facilities, must provide the name and address of the financial institution, the name of the account holder, and the account number to OFAC within 10 business days of the establishment of the account.

(c) This general license does not authorize any funds transfers to any location outside the United States.

Note 1 to paragraph (c): A covered individual has an interest in any funds remaining in a commissary-type account

with a prison, jail, or other similar facility established pursuant to paragraph (a)(3) of this section after the covered individual is released from custody or incarceration.

Note 2 to paragraph (c): In the case of individuals who are in custody or incarcerated, funds transfers must be authorized by and consistent with the conditions, protocols, and other requirements established by the jail, prison, or other facility.

Note 3 to § 536.509: The authorization in this section only applies to laws and regulations administered by OFAC and should not be interpreted to excuse compliance with other applicable laws or regulations, including the immigration laws of the United States.

■ 25. Add § 536.510 to subpart E to read as follows:

§ 536.510 Certain transactions for the expenses of maintaining blocked tangible property.

(a) Specially designated narcotics traffickers are authorized to engage in the following transactions:

(1) Making payment for and receiving goods and services for the maintenance of blocked tangible property required pursuant to § 536.206; and

(2) Receiving and making funds transfers in furtherance of the authorized transactions set forth in paragraph (a)(1) of this section from unblocked funds originating outside the United States, provided that any funds received may not originate from any individual or entity whose property or interests in property are blocked pursuant to any part of this chapter or any Executive order or statute, other than the specially designated narcotics trafficker(s), who owns the property.

(b)(1) Any person making payment for or receiving goods and services for the maintenance of tangible property blocked pursuant to § 536.201 and authorized by paragraph (a)(1) of this section must file a report on the transactions with OFAC within 30 days of the first transaction related to that property and annually thereafter. Such reports shall include the following numbered sections and information:

(i) Estimated or actual dollar value of the transaction(s), as determined by the value of the payment, goods, or services;

(ii) A description of the blocked property;

(iii) The parties involved;

(iv) The type and scope of transactions conducted; and

(v) The dates and duration of the transactions.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method):* OFAC.Regulations.Reports@treasury.gov; or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

■ 26. Revise newly redesignated § 536.511 to read as follows:

§ 536.511 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 27. The authority citation for part 598 is revised to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart B—Prohibitions

■ 28. Revise § 598.202 to read as follows:

§ 598.202 Prohibited transactions.

(a) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person, of a specially designated narcotics trafficker are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Note 1 to paragraph (a): See § 598.314 and the notes to that section for the definition and information about the public listing of specially designated narcotics traffickers and OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). See paragraph (c) of § 598.314 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a): Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, and administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, a specially designated narcotics trafficker is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) The prohibitions in paragraph (a) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 598.203 [Removed and Reserved]

■ 29. Remove and reserve § 598.203.

■ 30. Revise § 598.204 to read as follows:

§ 598.204 Evasions; attempts; conspiracies.

(a) Any transaction on or after the effective date that has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

■ 31. Revise § 598.206 to read as follows:

§ 598.206 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 598.202 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 598.202 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 598.202 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 598.202, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

■ 32. Add § 598.207 to subpart B to read as follows:

§ 598.207 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 598.202 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 598.202 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

■ 33. Add § 598.300 to subpart C to read as follows:

§ 598.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

■ 34. Revise § 598.301 to read as follows:

§ 598.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 598.202 held in the name of a specially designated narcotics trafficker, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 598.301: See § 598.314 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more specially designated narcotics traffickers.

■ 35. Revise § 598.305 to read as follows:

§ 598.305 Foreign person.

The term *foreign person* means any citizen or national of a foreign state, wherever located, or any entity not organized under the laws of the United States, but does not include a foreign state.

§ 598.306 [Removed and Reserved]

■ 36. Remove and reserve § 598.306.

■ 37. Revise § 598.308 to read as follows:

§ 598.308 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

(c) The term *specific license* means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

Note 1 to § 598.308: See § 501.801 of this chapter on licensing procedures.

■ 38. Revise § 598.313 to read as follows:

§ 598.313 Significant foreign narcotics trafficker.

The term *significant foreign narcotics trafficker* means any foreign person that plays a significant role in international narcotics trafficking that the President has determined to be appropriate for sanctions and has publicly identified under section 804(b) or section 804(h)(1) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1903(b) or (h)(1)).

Note 1 to § 598.313: On May 15, 2015, the functions conferred upon the President by sections 804(b) and (h) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1903(b) and (h)), were delegated to the Secretary of the Treasury.

■ 39. Revise § 598.314 to read as follows:

§ 598.314 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Significant foreign narcotics traffickers; and

(b) Foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, because they are found to be:

(1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;

(2) Owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker; or

(3) Playing a significant role in international narcotics trafficking; and

(c) Entities owned in the aggregate, directly or indirectly, 50 percent or more by one or more specially designated narcotics traffickers.

Note 1 to § 598.314: The names of persons determined to fall within paragraph (a) or (b) of this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier "[SDNTK]." The SDN List is accessible through the following page on OFAC's website: www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Entities that fall within paragraph (c) of this section are also persons whose property and interests in property are blocked pursuant to this part, regardless of whether they are identified by OFAC or appear on the SDN List.

Note 2 to § 598.314: The Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), in Section 806 (21 U.S.C. 1905), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published in the **Federal Register** and incorporated into the SDN List with the identifier "[BPI–SDNTK]."

Note 3 to § 598.314: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

§ 598.315 [Removed and Reserved]

■ 40. Remove and reserve § 598.315.

■ 41. Add § 598.320 to subpart C to read as follows:

§ 598.320 Finance.

The term *finance* includes engaging in any transaction involving funds, other assets, property, or interest in property, that are derived, obtained, or retained from, directly or indirectly, narcotic drugs, controlled substances, or listed chemicals. This includes the transporting, transmitting, or transferring of any such assets, property, or interests in property that creates the appearance that the funds, assets, or property were legitimately acquired, furthers the illicit activity, conceals or disguises the assets, avoids reporting requirements, or otherwise promotes the carrying on of illicit activity, such as money laundering.

Note 1 to § 598.320: The definition of *finance* listed above is specific to this part and not any other parts of Chapter 31. See § 598.101.

■ 42. Add § 598.321 to subpart C to read as follows:

§ 598.321 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

Subpart D—Interpretations

■ 43. Revise § 598.404 to read as follows:

§ 598.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 598.202 if effected after the effective date.

■ 44. Revise § 598.406 to read as follows:

§ 598.406 Provision of services.

(a) The prohibitions on transactions contained in § 598.202 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a specially designated narcotics trafficker.

Note 1 to § 598.406: See §§ 598.507 and 598.513 on licensing policy with regard to the provision of certain legal and emergency medical services.

■ 45. Revise § 598.407 to read as follows:

§ 598.407 Offshore transactions involving blocked property.

The prohibitions in § 598.202 on transactions or dealings involving blocked property, as defined in § 598.301, apply to transactions by any U.S. person in a location outside the United States.

■ 46. Revise § 598.409 to read as follows:

§ 598.409 Credit extended and cards issued by financial institutions to a specially designated narcotics trafficker.

The prohibition in § 598.202 on dealing in property subject to that

section prohibits U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to a specially designated narcotics trafficker.

■ 47. Add § 598.411 to subpart D to read as follows:

§ 598.411 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, a specially designated narcotics trafficker. For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a specially designated narcotics trafficker if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 48. Revise § 598.507 to read as follows:

§ 598.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of a specially designated narcotics trafficker is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to §§ 598.508 and 598.509, which authorize certain types of payments for legal services; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to specially designated narcotics traffickers, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this paragraph. Additionally, U.S. persons who provide services authorized by this paragraph do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 598.405.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 598.202(a), is prohibited unless licensed pursuant to this part.

Note 1 to § 598.507: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds necessary for the payment of professional fees and reimbursement of incurred expenses where alternative funding sources are not available.

■ 49. Add § 598.508 to subpart E to read as follows:

§ 598.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 598.507(a) to or on behalf of a specially designated narcotics trafficker is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 598.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 598.507(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method):* OFAC.Regulations.Reports@treasury.gov; or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

■ 50. Add § 598.509 to subpart E to read as follows:

§ 598.509 Payment of legal fees and expenses at public expense.

U.S. persons that are attorneys, law firms, or legal services organizations are authorized to receive payment of professional fees and reimbursement of incurred expenses from public funds for the provision of legal services authorized by § 598.507(a).

■ 51. Add § 598.510 to subpart E to read as follows:

§ 598.510 Certain transactions for maintenance, employment, and related banking services for blocked individuals physically located in the United States.

(a) Individuals who are specially designated narcotics traffickers who are in U.S. custody or incarcerated in jails, prisons, or similar facilities in the United States (“covered individuals”), are authorized to engage in the following transactions within the United States:

(1) Purchasing, making payment for, and receiving goods and services for their maintenance and the maintenance of their spouse or persons who are sharing or who would ordinarily share a common dwelling as a family with them, located in the United States, including food, clothing, housing, medical care, education, transportation, insurance, and utilities;

(2) Obtaining or continuing employment and engaging in all transactions ordinarily incident to such employment, including receipt of salary and benefits;

(3) Establishing accounts with a U.S. financial institution, or a commissary-type account with a prison, jail, or other similar facility, located in the United States, for use in connection with the transactions authorized in paragraph (a)(1) and (a)(2) of this section; and

(4) Receiving and making funds transfers in furtherance of the authorized transactions set forth in paragraphs (a)(1) through (3) of this section from unblocked funds originating within or outside the United States, provided that any funds received may not originate from any individual or entity whose property or interests in property are blocked pursuant to any part of this chapter or any Executive order or statute, other than the covered individual or his or her spouse or persons who are sharing or who would ordinarily share a common dwelling as a family with the covered individual.

(b) Any financial institution that has established any account pursuant to paragraph (a)(3) of this section, excluding commissary-type accounts with prisons, jails, or other similar facilities, must provide the name and address of the financial institution, the name of the account holder, and the account number to OFAC within 10 business days of the establishment of the account.

(c) This general license does not authorize any funds transfers to any location outside the United States.

Note 1 to paragraph (c): A covered individual has an interest in any funds remaining in a commissary-type account with a prison, jail, or other similar facility established pursuant to paragraph (a)(3) of

this section after the covered individual is released from custody or incarceration.

Note 2 to paragraph (c): In the case of individuals who are in custody or incarcerated, funds transfers must be authorized by and consistent with the conditions, protocols, and other requirements established by the jail, prison, or other facility.

Note 3 to § 598.510: The authorization in this section only applies to laws and regulations administered by OFAC and should not be interpreted to excuse compliance with other applicable laws or regulations, including the immigration laws of the United States.

■ 52. Add § 598.511 to subpart E to read as follows:

§ 598.511 Certain transactions for the expenses of maintaining blocked tangible property

(a) Specially designated narcotics traffickers are authorized to engage in the following transactions:

(1) Making payment for and receiving goods and services for the maintenance of tangible property blocked pursuant to § 598.202(a); and

(2) Receiving and making funds transfers in furtherance of the authorized transactions set forth in paragraph (a)(1) of this section from unblocked funds originating outside the United States, provided that any funds received may not originate from any individual or entity whose property or interests in property are blocked pursuant to any part of this chapter or any Executive order or statute, other than the specially designated narcotics trafficker(s) who owns the property.

(b)(1) Any person making payment for or receiving goods and services for the maintenance of tangible property blocked pursuant to § 598.202(a) authorized by paragraph (a)(1) of this section must file a report on the transactions with OFAC within 30 days of the first transaction related to that property. Such reports shall include the following numbered sections and information:

(i) Estimated or actual dollar value of the transaction(s), as determined by the value of the payment, goods, or services;

(ii) A description of the blocked property;

(iii) The parties involved;

(iv) The type and scope of transactions conducted; and

(v) The dates and duration of the transactions.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method):* OFAC.Regulations.Reports@treasury.gov; or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

■ 53. Add § 598.512 to subpart E to read as follows:

§ 598.512 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

■ 54. Revise § 598.803 to read as follows:

§ 598.803 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to the Foreign Narcotics Kingpin Designation Act, the Presidential Memorandum of May 15, 2015: Delegation of Functions Under the Foreign Narcotics Kingpin Designation Act, or the Presidential Memorandum of May 31, 2013: Delegation of Functions Under Subsection 804(h)(2)(A) of the Foreign Narcotics Kingpin Designation Act may be taken by the Director of the OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Dated: May 12, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021-10314 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2018-OS-0055]

RIN 0790-AK41

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is finalizing the rule to exempt from the Privacy Act some records maintained in the DoD Defense Manpower Data Center system of records titled "Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records." A system of records notice for this system

has been published in the **Federal Register**.

DATES: This final rule is effective June 16, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20311-1155, or by phone at (571) 372-0478.

SUPPLEMENTARY INFORMATION: On August 21, 2018, the Department of Defense published a proposed rule titled "Privacy Act of 1974; Implementation," which proposed to exempt some records maintained in DMDC 18 DoD, "Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records" (83 FR 42234-42235) from subsection (d) of the Privacy Act. The public comment period ended on September 20, 2018. At the end of the public comment period, DoD did not receive any pertinent public comments.

DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728-14811) that contains all the codified information required for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. The OSD/JS Privacy Program regulation at 32 CFR part 311, last updated on October 30, 2009 (74 FR 56114), was no longer required and was removed from the CFR on August 7, 2019 (84 FR 38552). A system of records notice for this system was published in the **Federal Register** on August 21, 2018 (83 FR 42262-42266).

This modification to 32 CFR part 310 adds a new Privacy Act exemption rule for the Synchronized Redeployment and Operational Tracker Enterprise Suite (SPOT-ES), which is used at installations to manage, track, account for, monitor, and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support. Contract scope, installations, and/or activities requiring contractor support as documented in SPOT-ES may be classified under Executive Order (E.O.) 13526, "Classified National Security Information." Information classified under E.O. 13526, as implemented by DoD Manual (DoDM) 5200.01 Volumes 1 and 3, and DoD Instruction (DoDI) 5200.01, may be exempt pursuant to 5 U.S.C. 552a(k)(1). Granting unfettered access to information that is properly classified pursuant to those authorities

may cause damage to the national security.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review," Executive Order 13563, "Improving Regulation and Regulatory Review"

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, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action under these Executive Orders.

Congressional Review Act

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

2 U.S.C. Ch. 25, "Unfunded Mandates Reform Act"

This final rule is not subject to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532) because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100M or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

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

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, "Federalism"

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 310.29 is amended by adding paragraph (c)(28) to read as follows:

§ 310.29 Procedures for exemptions.

* * * * *

(c) * * *

(28) *System identifier and name.* DMDC 18 DoD, Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records.

(i) *Exemption.* Information classified under E.O. 13526, as implemented by DoD Instruction (DoDI) 5200.01 and DoD Manual (DoDM) 5200.01, Volumes 1 and 3, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Reasons.* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 13526, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3, may cause damage to the national security.

Dated: May 12, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-10313 Filed 5-14-21; 8:45 am]

BILLING CODE 5001-06-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2018-0762; FRL-10019-62]

Trifludimoxazin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of trifludimoxazin in or on multiple commodities which are identified and discussed later in this document. BASF corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 17, 2021. Objections and requests for hearings must be received on or before July 16, 2021 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2018-0762, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2018-0762 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 16, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2018-0762, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

II. Summary of Petitioned-For Tolerance

In the *Federal Register* of April 19, 2019 (84 FR 16430) (FRL-9991-14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8709) by BASF corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide trifludimoxazin, in or on almond, hulls at 0.15 parts per million (ppm); fruit, citrus, group 10-10 at 0.01 ppm; fruit, pome, group 11-10 at 0.01 ppm; grain, cereal, forage, fodder and straw, group 16 (except rice) at 0.01 ppm; grain, cereal, group 15 at 0.01 ppm; nut, tree, group 14-12 at 0.01 ppm; peanut at 0.01 ppm; peanut, hay at 0.01 ppm; vegetable, foliage of legume, group 07 at 0.01 ppm; vegetable, legume, group 06 at 0.01 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, <http://www.regulations.gov>. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes

exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for trifludimoxazin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifludimoxazin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The available database of guideline studies for trifludimoxazin indicates that the primary target organs are the thyroid and liver. Trifludimoxazin is a protoporphyrinogen oxidase (PPO)-inhibitor. PPO is a key enzyme in chlorophyll and cytochrome pigments, as well as in heme. Although hematological effects associated with this class were observed, they are not considered adverse at the selected lowest-observable adverse-effects levels (LOAELs). Effects on the thyroid occurred in rats and consisted primarily of follicular cell hypertrophy/hyperplasia and altered colloid of the thyroid after subchronic and chronic exposure durations. Increased relative thyroid weights were also observed in male rats; however, thyroid hormones were not adversely affected after subchronic exposure for males and females. Liver effects (increased alanine aminotransferase (ALT) and alkaline phosphatase (ALP), organ weight, and histopathology) were also observed at the same dose as thyroid effects in male rats after subchronic exposure. In mice, increased liver weight, increased γ -glutamyl transferase (GGT), and hypertrophy were observed after subchronic exposures. Increased liver

weight, foci of (eosinophilic) cellular alteration, centrilobular hypertrophy, macrovesicular fatty change and centrilobular pigment storage was observed in male mice and oval cell hyperplasia and (multi)focal necrosis was observed in female mice after chronic exposure. After chronic exposure to the rat, increased pigment, multinucleated hepatocytes, and bile duct hyperplasia in the liver was observed at the same dose as thyroid effects. Effects on the reproductive system were observed as evidence of increased abnormal sperm in male rats in the extended one generation reproductive toxicity study (EOGRS), and as effects to the epididymis in rats after subchronic and chronic exposure.

Trifludimoxazin did not demonstrate neurotoxic potential in either acute or subchronic neurotoxicity studies in rats. Observations suggestive of neurotoxicity were seen in the 90-day subchronic study in dogs (e.g., functional observational battery (FOB) deficits, histopathological findings in the spinal cord and medulla oblongata (degeneration of fasciculus gracilis and white matter)), but no neurotoxicity effects were seen in either the 28-day dog study, which tested lower doses, or the chronic dog study, which tested higher doses relative to the 90-day study.

There were no adverse maternal or developmental effects observed in the rat developmental toxicity study at the limit dose. However, in the rabbit developmental study, decreased fetal body weight was observed at a lower dose than maternal toxicity (increased incidence of late abortions); thus, increased quantitative susceptibility was observed. The Extended One-Generation Reproductive Toxicity Study (EOGRS) in rats demonstrated no increase in susceptibility as no effects were observed in the offspring while increased incidence and severity of follicular cell hypertrophy/hyperplasia and altered colloid in the thyroid was observed in the parental animals.

Immunotoxicity was not observed throughout the toxicity database. Additionally, there were no effects in the dermal toxicity study, including any effects to the thyroid.

The Agency has classified trifludimoxazin as “suggestive evidence of carcinogenic potential” based on thyroid tumors, driven by adenomas, observed in male rats at 750 ppm (33 mg/kg/day); an absence of treatment-related tumors in female rats and in male and female mice, and a lack of concern for mutagenicity. The Agency has concluded that quantification of cancer risk using a non-linear approach

(i.e., reference dose (RfD)) will adequately account for all chronic toxicity, including potential carcinogenicity, that could result from exposure to trifludimoxazin. The chronic reference dose (0.11 mg/kg/day) is several times lower than the level at which tumors were observed.

Specific information on the studies received and the nature of the adverse effects caused by trifludimoxazin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in pages 13–19 of document Trifludimoxazin: New Active Ingredient Human Health Risk Assessment for Registrations on Legume Vegetable Group 6, Foliage of Legume Vegetable Group 7, Citrus Fruit Group 10–10, Pome Fruit Group 11–10, Tree Nut Group 14–12, Cereal Grain Group 15 (except rice), Forage Fodder and Straw of Cereal Grain Group 16 (except rice), Peanut and Peanut Hay (hereinafter “Trifludimoxazin Human Health Risk Assessment”) in docket ID number EPA–HQ–OPP–2018–0762.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide>.

A summary of the toxicological endpoints for trifludimoxazin used for human risk assessment can be found in the Trifludimoxazin Human Health Risk Assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifludimoxazin, EPA considered exposure under the petitioned-for trifludimoxazin tolerances in 40 CFR part 180. EPA assessed dietary exposures from trifludimoxazin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for trifludimoxazin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption data from the United States Department of Agriculture’s (USDA’s) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined chronic dietary exposure assessment using tolerance-level residues, 100 percent crop treated (PCT), and default processing factors.

iii. *Cancer.* Based on the Agency’s analysis of the available data, EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to trifludimoxazin. Quantification of cancer risk using a non-linear RfD approach will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to trifludimoxazin; therefore, a separate cancer dietary assessment was not conducted.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for trifludimoxazin. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for trifludimoxazin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifludimoxazin. Further information regarding EPA drinking water models

used in pesticide exposure assessment can be found at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide>.

Using the Pesticides in Water Calculator (PWC), Pesticide Root Zone Model and the Varying Volume Water Model (PRZM/VVWM), EPA calculated the estimated drinking water concentrations (EDWCs) of trifludimoxazin for acute and chronic exposures in surface and ground water. EPA used the modeled EDWCs directly in dietary exposure model to account for the contribution of trifludimoxazin residues in drinking water as follows: 5.0 ppb was used in acute dietary assessment and 3.6 ppb was used in chronic dietary risk assessment.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifludimoxazin is not registered for any specific use patterns that would result in residential exposure.

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

The Agency has not found trifludimoxazin to share a common mechanism of toxicity with any other substances, and trifludimoxazin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that trifludimoxazin does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the

completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was evidence of quantitative prenatal susceptibility in the rabbit developmental toxicity study. However, the degree of concern is low because clear NOAELs were identified for the effects, and the selected endpoints and doses are protective of the observed developmental effects and observed susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for trifludimoxazin is complete.

ii. Although there was evidence for neurotoxicity in the 90-day subchronic dog study, the degree of concern for the toxicity is low because this study is used as the basis for the risk assessment PODs and is protective of any potential neurotoxicity.

iii. Clear NOAELs were identified for the developmental/offspring effects observed in the rat and rabbit prenatal developmental studies, and endpoints selected for risk assessment are protective of these effects and the quantitative susceptibility observed in the rabbit developmental study and rat EOGRTS.

iv. There is no concern due to any residual uncertainties in the exposure database. No data gaps were identified, and exposure estimates are based upon conservative default assumptions. Tolerance-level residues and 100PCT are used in dietary exposure assessments, and residential exposures are not anticipated from the proposed use pattern. As such, residual uncertainty is negligible and does not impact considerations for the FQPA Safety Factor. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to trifludimoxazin in drinking water. These assessments will not underestimate the exposure and risks posed by trifludimoxazin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, trifludimoxazin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that the chronic risk estimates of food and drinking water for trifludimoxazin are below the Agency’s LOC at <1% of the cPAD for the United States population and all population subgroups. There are no residential uses for trifludimoxazin.

3. *Short-term risk and Intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term and intermediate-term adverse effect was identified; however, trifludimoxazin is not registered for any use patterns that would result in short-term or intermediate-term residential exposure. Short-term and intermediate-term risk is assessed based on short-term or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short-term or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term and intermediate-term risk for trifludimoxazin.

4. *Aggregate cancer risk for U.S. population.* As indicated above, the Agency has determined that the non-cancer chronic dietary assessment would account for any dietary cancer

risks. Based on the level of chronic risk being below the Agency's level of concern, EPA concludes aggregate exposure to trifludimoxazin will not pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to trifludimoxazin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High-Performance Liquid Chromatography with tandem Mass Spectroscopy (HPLC-MS/MS) method (Method D147/02 in plant matrices)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Trifludimoxazin is a new active ingredient, and no maximum residue limits (MRLs) have yet been established by Codex.

C. Response to Comments

One commenter expressed concern about the release of pesticide chemicals to the environment. The FFDCA does not authorize EPA to consider risks to the environment, per se; rather, the FFDCA authorizes EPA to establish tolerances that permit certain levels of pesticide residues in or on food when

the Agency can determine that such tolerances are safe. Taking into consideration the factors required in the FFDCA, EPA has made that safety determination for the tolerances subject to this action; the commenter provided no information relevant to that conclusion.

D. Revisions to Petitioned-For Tolerances

Based upon review of submitted data, the Agency is establishing tolerances that vary from what the petitioner requested. The petitioner had requested to establish tolerance on the entire cereal crop groups 15 and 16; however, the Agency has determined that the petitioned tolerance for cereal crop groups 15 and 16 must be revised to exclude rice commodities. While there are no data gaps for human health, the Agency has insufficient environmental fate data to support a tolerance on rice; therefore, the request to allow use on rice on the trifludimoxazin label will not be granted at this time. Because the product will not be used on rice, tolerances are not needed for residues in or on rice. Consequently, EPA is excluding rice from the tolerances being set on cereal crop groups 15 and 16.

V. Conclusion

Therefore, tolerances are established for residues of trifludimoxazin in or on almond, hulls; fruit, citrus, group 10-10; fruit, pome, group 11-10; grain, cereal, forage, fodder and straw, group 16 (except rice); grain, cereal, group 15 (except rice); nut, tree, group 14-12; peanut; peanut, hay; vegetable, foliage of legume, group 07 and vegetable, legume, group 06.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled "Reducing Regulations

and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 5, 2021.

Edward Messina,

Acting Director, Office of Pesticide Programs.

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

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

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

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

■ 2. Add § 180.717 to subpart C to read as follows:

§ 180.717 Trifludimoxazin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide trifludimoxazin, including its metabolites and degradates, in or on the commodities to Table 1 of this section. Compliance with the tolerance levels specified in Table 1 is to be determined by measuring only trifludimoxazin, dihydro-1,5-dimethyl-6-thioxo-3-[2,2,7-trifluoro-3,4-dihydro-3-oxo-4-(2-propyn-1-yl)-2H-1,4-benzoxazin-6-yl]-1,3,5-triazine-2,4(1H,3H)-dione, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond, hulls	0.15
Fruit, citrus, group 10–10	0.01
Fruit, pome, group 11–10	0.01
Grain, cereal, forage, fodder, and straw, Group 16, except rice	0.01
Grain, cereal, group 15, except rice	0.01
Nut, tree, group 14–12	0.01
Peanut	0.01
Peanut, hay	0.01
Vegetable, legume, group 6	0.01
Vegetable, foliage of legume, group 7	0.01

(b)–(d) [Reserved]

[FR Doc. 2021–10286 Filed 5–14–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 20–105; MD Docket Nos. 21–190; FCC 21–49; FRS 26030]

Assessment and Collection of Regulatory Fees for Fiscal Year 2021

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission) acts on several proposals that will impact FY 2021 regulatory fees.

DATES: This final action is effective June 16, 2021.

ADDRESSES: This is a summary of the Commission’s Report and Order, FCC 21–49, MD Docket No. 21–190, and MD Docket No. 20–105, adopted on May 3, 2021 and released on May 4, 2021. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554, or by downloading the text from the Commission’s website at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0906/FCC-17-111A1.pdf.a.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

II. Introduction

1. In this Report and Order, we adopt a new distinction between non-geostationary orbit (NGSO) satellite systems, as further described below, by creating two new fee subcategories, one for “less complex” NGSO systems and a second for all other NGSO systems identified as “other” NGSO systems, both under the broader category of “Space Stations (Non-Geostationary Orbit)”.

III. Report and Order—New Regulatory Fee Categories for Certain NGSO Space Stations

2. We first address the recent modifications in methodology for International Bureau licensee fees to more closely reflect the statutory requirement. After previously increasing the allocation of indirect full time equivalents (FTEs) in the International Bureau, in FY 2020 the Commission adopted a regulatory fee for foreign licensed space stations with U.S. market access, recharacterizing and thereby increasing the total number of direct FTEs for the International Bureau to 28. The Commission also adjusted the FTE allocation for the international bearer circuit (IBC) category to eight FTEs, from 6.9 FTEs, to better reflect the direct FTE work in the International Bureau for that fee category, resulting in 20 FTEs assigned to the satellite and earth station regulatory fee category. The Commission also adjusted the allocation of FTEs among geostationary orbit (GSO) and NGSO space station and earth station operators. The Commission noted the disparity in number of units between GSO space stations (98) and NGSO space stations (seven), and noted that under a single NGSO license, many satellites can be operated while counting as a single unit for regulatory fee purposes, but only one satellite can be operated per GSO space station regulatory fee unit. To ensure that regulatory fees more closely reflect the work of processing applications and rulemaking for each category, the Commission allocated 80% of space station regulatory fees to GSOs and 20%

of the space station regulatory fees to NGSOs.

3. In the further notice of proposed rulemaking (FNPRM) (85 FR 71593, Nov. 10, 2020) accompanying the FY 2020 Report and Order (85 FR 59864, Sept. 23, 2020), the Commission sought comment on different proposals for new fee categories for different types of NGSO systems. In response to the FNPRM, some commenters generally argue that the size of an NGSO system, or the services the system may provide, does not correlate to Commission resources. Others support adopting various aspects of the FNPRM proposals, and that NGSO systems should be distinguished by type. For purposes of calculating regulatory fees, we determine that the number of U.S.-authorized earth stations with which an NGSO system will communicate and the primary use of the NGSO system are complementary considerations that together define the complexity of the system. After consideration of the record, we conclude that the majority of our NGSO-related regulatory activities involve certain types of NGSO systems, and that the NGSO category can be divided into two types of systems for purposes of the assessment of regulatory fees: (1) “less complex” systems, defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS); and (2) “other” NGSO satellite systems. We therefore adopt two subcategories under the Space Station (Non-Geostationary Orbit) fee category: (1) Space Station (Non-Geostationary Orbit)—Less Complex; and (2) Space Station (Non-Geostationary Orbit)—Other, as discussed below.

4. In the FNPRM, the Commission sought comment on several specific proposals to define multiple NGSO system fee categories. Among these was a proposal from Amazon Web Services, Inc. (AWS) to adopt a nominal regulatory fees for NGSO systems with five or fewer U.S.-licensed earth stations for Telemetry, Tracking, and Control (TT&C) and non-domestic data and downlink purposes. As discussed below, we adopt a variation on this proposal. The Commission also sought comment on a proposal from Kineis to use a formula to calculate fee tiers for an NGSO system based on the number of operating satellites and the total transmit bandwidth. Kineis had argued that its proposal would allow for fair allocation of fees in consideration of the varying facets of each NGSO system, such as size, number of space stations,

necessary spectrum, and services provided. In comments to the FNPRM, Kepler Communications Inc. (Kepler) recommends a variation on Kineis’s approach, proposing fee tiers based on quantity of desired bandwidth, the “value” of the desired spectral band, and aggregate on-orbit mass. Additionally, the Commission sought comment on a proposal from Eutelsat S.A. (Eutelsat) to create two regulatory fee categories for NGSO systems based on the number of satellites, as well as a proposal of Myriota Pty. Ltd. (Myriota) to assign each NGSO system into one of three fee categories: Fixed-satellite service (FSS), mobile satellite service (MSS) and remote sensing (EESS), and other NGSO systems.

5. In connection with these various proposals, a number of commenters agree that the Commission expends more resources on certain types of NGSO systems. Commenters focus on various characteristics of the NGSO systems. AWS, for example, suggests that EESS systems that communicate with five or fewer U.S.-licensed earth stations for TT&C and non-domestic data downlink purposes do not meaningfully gain access to the United States market. AWS explains that instead, the U.S.-located earth stations function as a data transit location, and actual service occurs in the cloud where the data is processed. Planet Labs Inc. (Planet) supports Myriota’s proposal to distinguish between systems based solely on the type of service offered. Planet asserts that the Commission expended greater resources in 2020 on FSS-related report and orders, proceedings, rulemakings, and processing adjudications than it did for other services.

6. Not all commenters take this view, however. For example, Space Exploration Technologies Corp. (SpaceX) disagrees with Myriota’s proposal and contends that the record contains no evidence that the service provided by an NGSO system correlates with the expenditure of Commission resources. SpaceX offers that many EESS systems require Commission staff to coordinate with government systems through the Interdepartmental Radio Advisory Committee process, while many FSS systems do not, and that the Commission has recently conducted rulemakings affecting various types of satellite systems beyond FSS systems. Planet counters that, although processing EESS applications can also be time consuming, the vast majority of the processing burden is borne by the applicant.

7. After reviewing and evaluating the regulatory tasks for all NGSO systems,

we agree with commenters asserting that we should differentiate within the NGSO space station category for regulatory fees. The amount of work involved in regulating NGSO systems and the number of reasonably related benefits provided to the payors of the NGSO fee category by our activities appear to directly correlate with certain characteristics in a requested authorization for an NGSO system. Both the number of earth stations and the primary use of the system are relevant. Accordingly, we adopt a regulatory fee category for “less complex” NGSO systems and define this “less complex” NGSO system category by adopting elements of several of the FNPRM proposals. For regulatory fee purposes, we define a “less complex” systems as NGSO satellite systems that plan to communicate with 20 or fewer U.S. authorized earth stations, primarily used for EESS and/or AIS. Any NGSO satellite systems that do not qualify as “less complex” would fall into the category of “other” NGSO satellite systems, for regulatory fee purposes.

8. Our experience demonstrates that the systems providing EESS and or AIS are most likely to be “less complex” systems if they also are planning to communicate with 20 or fewer earth stations. These “less complex” systems require fewer Commission resources because, for example, they are nearly always granted pursuant to waivers of resource-intensive processing rounds, based on their ability to share with other operators in the requested frequency bands. We agree with Planet’s assertion that those systems authorized through a processing round typically do involve considerable time and effort adjudicating contentious processing round disputes and related licensing matters. In addition, the Commission has expended significant resources on rulemakings and licensing proceedings for “more complex” NGSO systems. These rulemakings and licensing proceedings have focused on issues that correlate to systems planning to communicate with a large number of earth stations. As Planet notes in its comments, the Commission historically has devoted significant resources to NGSO FSS-related rulemaking matters. The Commission has also expended considerable resources evaluating spectrum sharing issues between NGSO FSS and terrestrial services, which increase in complexity as the number of earth stations increase. Moreover, systems planning to communicate with larger numbers of earth stations typically have a large global presence. These global systems are likely to

require more International Bureau staff resources in connection with international forums, such as the International Telecommunication Union, because of the significant global presence of these systems. They also require, in many cases, more significant spectrum needs, which may involve increased multi-lateral coordination. Taking all of these facts together, we find both that adopting a category for “less complex” NGSO systems is appropriate, and that the criteria we have identified for this category generally correlates with those systems that receive fewer regulatory benefits from the Commission’s overall activities benefiting NGSOs.

9. We also find the Commission’s regulatory work and related benefits provided to the payor of this fee category appear to have a direct correlation with the number of U.S.-authorized earth stations with which an NGSO system will communicate. As AWS points out, the complexity of that system relates generally with the amount of regulatory resources expended in connection with this type of system. Specifically, we find that those systems planning to use 20 or fewer earth stations have generally limited scope of authorization and require significantly less Commission oversight than the regulatory work involved with other NGSO systems. Our internal analysis also shows that regulation of NGSO systems planning to communicate with 20 or fewer U.S.-authorized earth stations tends to be noticeably less complex compared to the regulation of NGSO systems planning to communicate with more than 20 earth stations. Although 20 earth stations are greater in number than AWS’s proposed five earth stations, we think that it would be a more accurate number as a proxy to reflect the complexity of space systems based on our analysis.

10. We use the phrase “planning to communicate” since some more complex NGSO systems may communicate with a small number of earth stations during initial operational phases, but actually intend to communicate with a significantly larger set of earth stations. We find this initial phase to not be reflective of Commission costs, and therefore we will look to longer-term system design in order to determine complexity. We will interpret “planning to communicate” based on the system design provided at the NGSO space station application stage. For regulatory fee purposes, the term “earth station” encompasses all stations, including satellite gateways and user terminals. Transmitters, such as AIS, do

not fall within the definition of “earth station” under part 25 of the Commission’s rules since satellite reception is not intended, but rather is an incidental monitoring of a signal primarily intended for reception by terrestrial stations.

11. We are persuaded by AWS to include TT&C earth stations used for spacecraft control in this earth station count. In addition, the total number of earth stations include all earth stations planning to communicate with the relevant system—whether the earth station is operated by the system operator or a third party is irrelevant for regulatory fee purposes.

12. As discussed above, we expect less complex NGSO space systems operations would involve primarily EESS and/or AIS. NGSO systems that plan to communicate with 20 or fewer U.S.-authorized stations often are developed for collecting earth exploration data and utilize communications primarily for the purpose of transferring data collected in space back to the ground. Such operations do not include objectively complex services like industrial Internet of Things services and other data services which involve space stations that typically communicate with hundreds or thousands of user terminals, and impose larger regulatory review burdens. Although we expect less complex NGSO space systems would be used primarily for EESS and/or AIS, we decline to explicitly limit “less complex” system eligibility to a particular service class alone, as proposed by Myriota, because some “less complex” systems may use multiple types of services, and the number of earth stations with which a system plans to communicate is a reasonable proxy for identifying complexity of NGSO space stations systems, and our regulatory costs. We note that EESS services typically are authorized to communicate with 20 or fewer U.S.-authorized earth stations. With respect to AIS, as a shipboard broadcast system that transmits a marine vessel’s identification and position to aid in navigation and maritime safety, we also found that these systems receiving AIS signals and planning to operate with 20 or fewer earth stations involve less Commission oversight compared to other NGSO systems. We do not, however, foreclose the possibility of designating other categories of NGSO systems as “less complex” systems in the future if our experience supports a finding that our regulatory work for such systems is significantly less than those for other NGSO systems.

13. We assess the “less complex” regulatory fee on a per NGSO space station system basis, rather than on a per-earth station basis as proposed by AWS. Additionally, although AWS proposes that we assess only a nominal fee for NGSO systems with a small number of earth stations, we find that NGSO systems communicating with even a small number of earth stations do still benefit from the Commission’s regulation, including enforcement, rulemakings, and international activities, and require Commission resources, therefore justifying a substantive, rather than nominal, fee. As AWS notes, most NGSO systems plan to utilize earth stations globally to remain competitive, and, for these NGSOs, downlinking to the United States is done as a function of needing a robust earth station network for its operations. Regardless of whether a space system communicates with one or thousands of earth stations, the Commission still expends significant time and resources in regulating these space systems, and those considerations will be calculated accordingly into the “less complex,” yet substantive, fee. We also find that among the new less complex category of space systems, there are not significant differences with respect to our regulatory activities benefiting each space system. We further decline to assess fees for an NGSO space station system on a “per earth station” basis. We note that the number of earth stations does not drive the regulatory resources expended for regulating space stations per se; rather, the number of earth stations typically correlates to the complexity of an NGSO space station. As noted elsewhere, we use the number of earth stations as a proxy to determine complexity of a space system. Our experience shows that there is not a meaningful resource difference, for example, between regulation of a system planning to communicate with four U.S. earth stations versus a system planning to communicate with 17 U.S. earth stations. The clear differentiation, at this point, appears to be between those NGSO systems planning to communicate with roughly 20 or fewer earth stations authorized by the United States and other NGSO systems, the vast majority of which plan to communicate with more than 100 earth stations authorized by the United States, which may include user terminals or otherwise ubiquitously deployed earth stations. In our experience, there are not “close cases” between these two categories of systems. Accordingly, we adopt this fee on a per NGSO space station system basis given the regulatory cost and

benefits directly related to NGSO space systems, not earth stations.

14. We disagree with those commenters advocating against adopting additional categories of NGSO fees. The Commission collects regulatory fees based on the Commission's efforts spent on regulating a payor and taking into account the benefits provided to the payor by the Commission's activities. Telesat and SES suggest that, if a system operator believes that in a particular case the standard NGSO fee is substantially disproportionate, it can seek a fee waiver or reduction. While our rules do enable waiver requests, they are exceptional in nature, and we decline to set up a process based on an expectation of a fee waiver or reduction. As described above, we see a clear dividing point between systems that are more complex to regulate and systems that require far fewer resources to regulate, and find that this dividing line is fairer and easier to administer than a fee waiver or other process. We also disagree with Eutelsat and OneWeb that we need additional development of the record before creating a new NGSO fee category. We sought further comment in the FNPRM to develop the record on this issue and using a combination of factors explored in the record, conclude that certain NGSO systems should pay a different fee based on the resources required to regulate such systems. If circumstances warrant, the Commission may choose revisit or revise this new category in the future.

15. We also disagree, at this time, with the formula-based systems proposed by Kineis and Kepler, since these proposals are overly complex and would require the additional expenditure of Commission resources to calculate and assign fees for each individual system. Moreover, we do not find that all aspects proposed to be factored into these formulas correlate with the resources the Commission expends in regulating each system. In our experience, number of satellites, total bandwidth, on-orbit mass, and market share of the service type are not consistently indicative of the complexity of NGSO regulation. We also decline to adopt Eutelsat's proposal to create two regulatory fee categories for NGSO systems based on the number of satellites. It is not our experience that number of satellites (or satellite mass) is the key driver of system complexity and regulation. For example, an NGSO system with a small number of satellites, authorized as part of a processing round to operate in the FSS to provide broadband to user terminals in a particular area, will receive

significant continuous benefits reasonably related to our regulatory work. Instead, we find that the number of earth stations authorized by the United States with which a system plans to communicate provides a clearer proxy for identifying system complexity upon which to allocate fees. This approach ensures that our fee apportionment is reasonably related to our regulatory cost and that the fee structure is easier to administer.

16. In summary, after reviewing the record and analyzing the resources the International Bureau devotes to NGSO oversight and regulation, we adopt an additional NGSO space station category for "less complex" NGSO systems, for regulatory fees. In addition, we create a fee category for "other" NGSO systems that do not qualify as "less complex" systems. We place these two categories: (1) Space Station (Non-Geostationary Orbit)—Less Complex; and (2) Space Station (Non-Geostationary Orbit)—Other under the current Space Station (Non-Geostationary Orbit) fee category.

IV. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Further Notice of Proposed Rulemaking (FNPRM) accompanying the regulatory fee Report and Order for fiscal year 2020. The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

A. Need for, and Objectives of, the Report and Order

2. In the Report and Order, the Commission adopts a modified version of a proposal to the FNPRM on creating a new regulatory fee category for "less complex" non-geostationary orbit (NGSO) satellite systems. The Commission defines "less complex" NGSO satellite systems as those NGSO systems that plan to communicate with 20 or fewer earth stations in the United States primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS).

3. Under section 9 of the Communications Act of 1934, as amended, (Communications Act or Act), regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities in an amount that can be reasonably expected to equal

the amount of the Commission's annual appropriation. The objective in the Report and Order for adopting the new regulatory fee category is to have a new category (and lower fee) for the smaller NGSO systems instead of grouping them with the larger NGSO systems.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

4. None.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

7. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their

primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

8. All Other Telecommunications. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$35 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus, most “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

9. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

11. In the FNPRM, the Commission sought comment on whether it should adopt a new fee category for certain types of NGSO systems, and in the Report and Order the Commission adopted a new category for a type of smaller “less complex” NGSO system that would have a lower regulatory fee than the other NGSO systems. The Commission reviewed and evaluated the regulatory work done for all NGSO systems and found that those systems planning to use 20 or fewer earth stations have generally limited scope of authorization, *i.e.*, Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS)

only, require significantly less Commission oversight than the regulatory work involved with other NGSO systems. For that reason, the Commission adopted a new regulatory fee category for these smaller NGSO systems.

12. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases. This new fee category adopted for “less complex” NGSO systems will have a lower regulatory fee than that for the other NGSO systems, because these systems are much smaller than traditional NGSO systems.

V. Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Report and Order *is hereby adopted*.

14. *It is further ordered* that the Report and Order *shall be effective* 30 days after publication in the **Federal Register**.

15. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in this document to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2021-10261 Filed 5-14-21; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 86, No. 93

Monday, May 17, 2021

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-2021-0368; Project Identifier MCAI-2021-00204-T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. This proposed AD would require replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and cargo compartment doors; and for certain airplanes, implementing an operational limitation for certain routes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 July 1, 2021.

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

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0368.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0368; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email sanjay.ralhan@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-2021-0368; Project Identifier MCAI-2021-00204-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 <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

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 Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email sanjay.ralhan@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0049, dated February 18, 2021 (EASA AD 2021-0049) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318-111, -112, -121, and -122; A319-111, -112, -113, -114, -115, -131, -132, -133, -151N, -153N, and -171N; A320-211, -212, -214, -215, -216, -231, -232, -233, -251N, -252N, -253N, -271N, -272N, and -273N; and A321-111, -112, -131, -211, -212, -213, -231, -232, -251N, -252N,

–253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. The FAA is proposing this AD to address low halon concentration, which could affect the fire extinguishing system efficiency in the cargo compartments and possibly result in failure of the system to contain a cargo compartment fire. See the MCAI for additional background information.

Relationship Between This Proposed AD and AD 2020–16–01

This NPRM would not supersede AD 2020–16–01, Amendment 39–21185 (85 FR 47013, August 4, 2020) (AD 2020–16–01). Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and bulk cargo compartment doors; and for certain airplanes, implementing an operational limitation for certain routes. Accomplishment of the proposed actions would then terminate all requirements of AD 2020–16–01 for forward and aft cargo door seals having part number (p/n) D5237106020000, D5237106020200, D5237106020400, D5237300120000, or D5237300120200; and bulk cargo door seals having p/n D5237200220000 or D5237200220200 only. AD 2020–16–01 also addresses paragraphs (1) and (2) of EASA AD 2021–0049, and forward and aft cargo door seals p/n D5237106020400S, approved under parts manufacturer approval (PMA) PQ1715CE. This AD does not address p/n D5237106020400S, approved under PMA PQ1715CE. The FAA is considering additional rulemaking to require replacement of p/n D5237106020400S, approved under PMA PQ1715CE.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0049 describes procedures for replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and bulk cargo compartment door. For certain airplanes, EASA AD 2021–0049 describes procedures for implementing an operational limitation prohibiting flying the airplane over a route having a diversion time of more than 60 minutes. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0049 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

EASA AD 2021–0049 specifies amending the Aircraft Flight Manual (AFM) and “operating that aeroplane accordingly.” However this AD would not include a requirement for “operating that aeroplane accordingly” as that action is already required by existing FAA operating regulations. FAA regulations require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a

requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0049 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0049 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 the EASA AD. Service information specified in EASA AD 2021–0049 that is required for compliance with EASA AD 2021–0049 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0368 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 11 work-hours × \$85 per hour = Up to \$935	Up to \$6,760	Up to \$7,695	Up to \$13,296,960.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2021–0368; Project Identifier MCAI–2021–00204–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 1, 2021.

(b) Affected ADs

This AD affects AD 2020–16–01, Amendment 39–21185 (85 FR 47013, August 4, 2020) (AD 2020–16–01).

(c) Applicability

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

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection; 52, Doors.

(e) Reason

This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. The FAA is issuing this AD to address low halon concentration, which could affect the fire extinguishing system efficiency in the cargo compartments and possibly result in failure of the system to contain a cargo compartment fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0049, dated February 18, 2021 (EASA AD 2021–0049).

(h) Exceptions to EASA AD 2021–0049

(1) Where EASA AD 2021–0049 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0049 do not apply to this AD; FAA AD 2020–16–01 addresses those requirements.

(3) Where paragraph (4) of EASA AD 2021–0049 specifies amending the Aircraft Flight Manual (AFM) and "operating that aeroplane accordingly," this AD does not include a

requirement for "operating that aeroplane accordingly" as that action is already required by existing FAA operating regulations.

(4) Paragraph (4) of EASA AD 2021–0049 specifies amending "the Aircraft Flight Manual (AFM) of the aeroplane by inserting a copy of this AD," however, this AD requires amending "the existing AFM and applicable corresponding operational procedures."

(5) The "Remarks" section of EASA AD EASA AD 2021–0049 does not apply to this AD.

(6) The provisions specified in paragraphs (5) and (6) of EASA AD 2021–0049 do not apply to this AD.

(i) Terminating Action for AD 2020–16–01

Accomplishing the actions required by this AD for the affected parts defined in EASA AD 2021–0049 terminates all requirements of AD 2020–16–01 for forward and aft cargo door seals having part number (p/n) D5237106020000, D5237106020200, D5237106020400, D5237300120000, or D5237300120200; and bulk cargo door seals having p/n D5237200220000 or D5237200220200 only.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2021–0049 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be

done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2021-0049, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; Internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0368.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email sanjay.ralhan@faa.gov.

Issued on May 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-10230 Filed 5-14-21; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-5733; File No. S7-05-21]

Performance-Based Investment Advisory Fees

AGENCY: Securities and Exchange Commission.

ACTION: Intent to issue order.

SUMMARY: The Securities and Exchange Commission (“Commission”) intends to issue an order that would adjust for inflation dollar amount thresholds in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance-based fees to “qualified clients.” Under that rule, an investment adviser may charge performance-based fees if a “qualified client” has a certain minimum net worth or minimum dollar amount of assets under the management of the adviser. The Commission’s order would increase, to reflect inflation, the minimum net worth that a “qualified client” must have under the rule. The order would also increase, to reflect inflation, the minimum dollar amount of assets under management.

Hearing or Notification of Hearing: An order adjusting the dollar amount tests

specified in the definition of “qualified client” will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary. Hearing requests should be received by the Commission’s Office of the Secretary by 5:30 p.m. on June 4, 2021. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary. Any such communication should be emailed to the Commission’s Secretary at Secretarys-Office@sec.gov.

FOR FURTHER INFORMATION CONTACT:

Matthew Cook, Senior Counsel, at (202) 551-6787 or IArules@sec.gov, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission intends to issue an order under the Investment Advisers Act of 1940 (“Advisers Act” or “Act”).¹

I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.² Congress prohibited these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements that Congress believed might encourage advisers to take undue risks with client funds to increase advisory fees.³ In 1970, Congress provided an exception from the prohibition for advisory contracts relating to the investment of assets in excess of \$1,000,000,⁴ if an

¹ 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Advisers Act, and all references to rules under the Advisers Act, including rule 205-3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

² 15 U.S.C. 80b-5(a)(1).

³ H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as “heads I win, tails you lose” arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940).

⁴ 15 U.S.C. 80b-5(b)(2). Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act of 1940 (“Investment Company Act”) [15 U.S.C. 80a-3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act.

appropriate “fulcrum fee” is used.⁵ Congress subsequently authorized the Commission to exempt, by rule or order, any advisory contract from the performance fee prohibition if the contract is with any person that the Commission determines does not need the protections of that prohibition.⁶

The Commission adopted rule 205-3 in 1985 to exempt an investment adviser from the prohibition against charging a client performance fees in certain circumstances.⁷ The rule, when adopted, allowed an adviser to charge performance fees if the client had at least \$500,000 under management with the adviser immediately after entering into the advisory contract (“assets-under-management test”) or if the adviser reasonably believed, immediately prior to entering into the advisory contract, that the client had a net worth of more than \$1,000,000 at the time the contract was entered into (“net worth test”). The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.⁸ In 1998, the Commission amended rule 205-3 to, among other

⁵ 15 U.S.C. 80b-5(b). A fulcrum fee generally involves averaging the adviser’s fee over a specified period and increasing or decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. See rule 205-2 under the Advisers Act; Adoption of Rule 205-2 under the Investment Advisers Act of 1940, As Amended, Definition of “Specified Period” Over Which Asset Value of Company or Fund Under Management is Averaged, Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)]. In 1980, Congress added another exception to the prohibition against charging performance fees, for contracts involving business development companies under certain conditions. See section 205(b)(3) of the Advisers Act.

⁶ Section 205(e) of the Advisers Act. Section 205(e) of the Advisers Act authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons that the Commission determines do not need its protections. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as “financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].”

⁷ Exemption To Allow Registered Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client’s Account, Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] (“1985 Adopting Release”). The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. See rule 205-3(a).

⁸ See 1985 Adopting Release, *supra* footnote 7, at Sections I.C and II.B. The rule also imposed other conditions, including specific disclosure requirements and restrictions on calculation of performance fees. See *id.* at Sections II.C-E.

things, change the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985.⁹ The Commission revised the former from \$500,000 to \$750,000, and the latter from \$1,000,000 to \$1,500,000.¹⁰

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹¹ amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall, by order, adjust for the effects of inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest multiple of \$100,000.¹² In May 2011, the Commission published a release (the “May 2011 Release”) that included a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test (from \$750,000 to \$1,000,000) and the net worth test (from \$1,500,000 to \$2,000,000).¹³

The May 2011 Release also proposed amendments to rule 205–3 providing, among other things, that the Commission would issue an order every five years in the future adjusting the rule’s dollar amount thresholds for inflation.¹⁴ On February 15, 2012, the Commission adopted these proposed amendments, which amended rule 205–3 to carry out the inflation adjustment of the rule’s dollar amount thresholds.¹⁵

⁹ See Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client’s Account, Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)].

¹⁰ See *id.* at Section II.B.1.

¹¹ Public Law 111–203, 124 Stat. 1376 (2010).

¹² See section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount tests in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount test was a factor in the Commission’s determination that the persons do not need the protections of that section).

¹³ See Investment Adviser Performance Compensation, Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)]. The Commission issued an order to revise the dollar amount thresholds of the assets-under-management and net worth tests, as described above, on July 12, 2011. See Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Advisers Act Release No. 3236 (July 12, 2011) [76 FR 41838 (July 15, 2011)] (“2011 Order”). The 2011 Order was effective as of September 19, 2011. *Id.* The 2011 Order applied to contractual relationships entered into on or after the effective date and did not apply retroactively to contractual relationships previously in existence.

¹⁴ See May 2011 Release, *supra* footnote 13.

¹⁵ See Investment Adviser Performance Compensation, Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358 (Feb. 22, 2012)] (amending rule 205–3 by, in part, revising the dollar amount thresholds to codify the 2011 Order); see also rule 205–3(d)(1)(i)–(ii).

Rule 205–3, as amended, states that the Commission will issue an order on or about May 1, 2016, and approximately every five years thereafter, for inflation the dollar amount thresholds of the rule’s assets-under-management and net worth tests,¹⁶ and specifies the price index on which future inflation adjustments will be based—the Personal Consumption Expenditures Chain-Type Price Index (“PCE Index”), which is published by the United States Department of Commerce,¹⁷ and is used in other provisions of the federal securities laws.¹⁸

On June 14, 2016, the Commission issued an order adjusting for inflation, as appropriate, the dollar amount thresholds of the assets-under-management test and the net worth test.¹⁹ As of August 15, 2016, the dollar amount of the assets-under-management test is \$1,000,000, and the dollar amount of the net worth test is \$2,100,000.²⁰

II. Discussion

A. Order Adjusting Dollar Amount Tests

Pursuant to section 418 of the Dodd-Frank Act and rule 205–3(e), today we

¹⁶ See rule 205–3(e).

¹⁷ See rule 205–3(e)(1). The PCE Index is an indicator of inflation in the personal sector of the U.S. economy. See Performance-Based Investment Advisory Fees, Advisers Act Release No. 4388 (May 18, 2016) [81 FR 32686 (May 24, 2016)], at text accompanying n.20.

¹⁸ See Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (adopting periodic inflation adjustments to the fixed-dollar thresholds for both “institutional customers” and “high net worth customers” under Rule 701 of Regulation R); see also Amendments to Form ADV, Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser’s duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice). The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. See section 929H(a) of the Dodd-Frank Act; see also Securities Investor Protection Corporation, Securities Investor Protection Act of 1970 Release No. 183 (Jan. 27, 2021) [86 FR 7900 (Feb. 2, 2021)].

¹⁹ Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Advisers Act Release No. 4421 (June 14, 2016) [81 FR 39985 (June 20, 2016)] (“2016 Order”). The 2016 Order was effective as of August 15, 2016. *Id.*

²⁰ *Id.* As a result of the 2016 Order, the dollar amount threshold of the net worth test was increased to \$2,100,000, but the dollar amount threshold of the assets-under-management test remained at \$1,000,000 because the amount of the Commission’s inflation adjustment calculation was smaller than the rounding amount specified under rule 205–3. *Id.*, at nn.8–9 and accompanying text.

are providing notice²¹ that the Commission intends to issue an order making the required inflation adjustment to the assets-under-management test and the net worth test in the definition of “qualified client” in rule 205–3. As discussed above, rule 205–3(e) requires that we adjust the dollar amount thresholds of the rule by order on or about May 1, 2016 and every five years thereafter. We intend to issue an order that would increase the dollar amount of the assets-under-management test from \$1,000,000 to \$1,100,000, and would increase the dollar amount of the net worth test from \$2,100,000 to \$2,200,000. As required under rule 205–3, both dollar amounts would take into account the effects of inflation by reference to historic and current levels of the PCE Index. Because the amount of the Commission’s inflation adjustment calculations are larger than the rounding amount specified under rule 205–3, the dollar amounts of both tests would be adjusted as a result of the Commission’s inflation adjustment calculation effected pursuant to the rule.²²

B. Effective Date

We anticipate that, if we issue the order described above, the effective date will be 60 days following the order

²¹ See section 211(c) of the Advisers Act (requiring the Commission to provide appropriate notice of and opportunity for hearing for orders issued under the Advisers Act).

²² Specifically, rule 205–3(e) provides that the adjusted dollar amounts shall be computed by: (1) Dividing the year-end value of the PCE Index (or any successor index thereto) for the calendar year preceding the calendar year in which the order is being issued (in this case, 2020), by the year-end value of the PCE Index (or successor) for the calendar year 1997 (such quotient, the “Adjustment Percentage”); (2) for the assets-under-management test, multiplying \$750,000 by the Adjustment Percentage and rounding the product to the nearest multiple of \$100,000; and (3) for the net worth test, multiplying \$1,500,000 by the Adjustment Percentage and rounding the product to the nearest multiple of \$100,000. As of April 29, 2021, the end-of-year 2020 PCE Index was 111.146, and the end-of-year 1997 PCE Index was 74.623. Assets-under-management test calculation to adjust for the effects of inflation: $(111.146/74.623) \times \$750,000 = \$1,117,075.16$; $\$1,117,075.16$ rounded to the nearest multiple of \$100,000 = \$1,100,000. Net worth test calculation to adjust for the effects of inflation: $(111.146/74.623) \times \$1,500,000 = \$2,234,150.33$; $\$2,234,150.33$ rounded to the nearest multiple of \$100,000 = \$2,200,000. The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the United States Department of Commerce. See <http://www.bea.gov>; see also Bureau of Economic Analysis, Table 2.3.4, “Price Indexes for Personal Consumption Expenditures by Major Type of Product,” available at https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&select_all_years=0&nipa_table_list=64&series=a&first_year=1997&last_year=2020&scale=99&categories=survey&thetable= (last visited Apr. 30, 2021).

date.²³ To the extent that contractual relationships are entered into prior to the order's effective date, the dollar amount test adjustments in the order would not generally apply retroactively to such contractual relationships, subject to the transition rules incorporated in rule 205–3.²⁴

By the Commission.

Dated: May 10, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10164 Filed 5–14–21; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0298; FRL–10023–53–Region 7]

Air Plan Approval; Nebraska; Revisions to Title 129 of the Nebraska Administrative Code; General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on July 16, 2020. This proposed action will amend the SIP to revise title 129 of the Nebraska Administrative Code by removing a portion of the SIP that addresses general conformity. General Conformity ensures that the actions taken by federal agencies do not interfere with a state's plan to attain and maintain national standards for air quality. Since states are no longer required to include general conformity requirements in SIPs, these proposed revisions remove unnecessary language and do not substantively change any existing statutory or

regulatory requirement. The proposed revisions do not impact the stringency of the SIP or air quality nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before June 16, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0298 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7986; email address: donohue.allie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Written Comments
- II. What is being addressed in this document?
- III. Have the requirements for approval of a SIP revision been met?
- IV. What action is the EPA taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0298, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is being addressed in this document?

The EPA is proposing to amend Nebraska's SIP to include revisions to title 129 of the Nebraska Administrative Code. The EPA is proposing to approve revisions to the Nebraska SIP submitted by the State of Nebraska on July 16, 2020. Specifically, the EPA is proposing to amend the Nebraska SIP by removing a portion of the SIP as follows: Title 129, Chapter 40. General Conformity. EPA is proposing approval of these revisions as they remove unnecessary language and do not substantively change any existing statutory or regulatory requirement.

The EPA approved this rule into the Nebraska SIP in 1972. In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) which eliminated the requirement for states to adopt and submit General Conformity SIPs. Section 6011 of SAFETEA–LU revised the conformity requirements in section 176(c) of the CAA. Specifically, section 6011(f) revised section 176(c)(4)(A) of the CAA by deleting the requirement for the states to adopt and submit General Conformity SIPs.

In 2010, EPA revised the General Conformity regulations to make the adoption and submittal of the General Conformity SIP optional for state and eligible federally-recognized tribal governments. See 75 FR 17253 (April 5, 2010). Since there is no longer a requirement for SIPs to include general conformity requirements, EPA finds that the proposed revisions will not impact the stringency of the SIP or air quality.

States are no longer required to have their own general conformity rules. If a state does not have a conformity SIP, then federal agencies will conduct an evaluation under the requirements of 40 CFR 93.150–93.165. The SIP revision being proposed for approval by this action removes unnecessary language from the SIP and does not have an adverse effect on air quality in Nebraska.

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

The State submission has met the public notice requirements for SIP

²³ When the Commission issued the 2011 and 2016 Orders adjusting the dollar amount tests of rule 205–3 as described above, the effective dates of the Orders were approximately 60 days following their issuance. See 2011 Order, *supra* footnote 13, at section III; 2016 Order, *supra* footnote 19, at section III.

²⁴ See rule 205–3(c)(1) (“If a registered investment adviser entered into a contract and satisfied the conditions of this [section] that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this [section]; Provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this [section] in effect at that time will apply with regard to that person or company.”); see also May 2011 Release, *supra* footnote 13, at section II.B.3.

submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of this SIP revision from September 28, 2019 to November 6, 2019 and held a public hearing on November 7, 2019. In a letter to the state dated November 7, 2019, the EPA stated that the agency “has no comment on the proposed repeal of this regulation.” The SIP revision meets the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to amend the Nebraska SIP by approving the state’s request to remove Title 129 section 40. General Conformity. The removal of this portion of the SIP will remove unnecessary language and does not substantively change any existing statutory or regulatory requirement. The EPA has determined that these changes will not impact the stringency of the SIP or adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Nebraska Regulations from the Nebraska State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. 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, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: May 7, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart CC—Nebraska

- 2. In § 52.1420, the table in paragraph (c) is amended by removing the entry “129–40” under the heading “Title 129—Nebraska Air Quality Regulations”.

[FR Doc. 2021–10123 Filed 5–14–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 86, No. 93

Monday, May 17, 2021

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

Agricultural Marketing Service

[Document Number AMS-TM-21-0034]

Supply Chains for the Production of Agricultural Commodities and Food Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; 30-day extension for public comments.

SUMMARY: The Agricultural Marketing Service (AMS) is providing an additional 30 days for public comments on the Notice on Supply Chains for the Production of Agricultural Commodities and Food Products published on April 21, 2021. During the first two weeks of the comment period, AMS received requests from stakeholders and organizations for additional time to provide thoughtful and thorough feedback to this request. Requests were received from representatives of critical supply chain activities whose comments would be of great value to the U.S. Department of Agriculture (USDA) in preparing the report required by the Executive Order on “America’s Supply Chains.”

DATES: Comments on the notice published April 21, 2021, must be received by June 21, 2021.

ADDRESSES: All written comments in response to this notice should be posted online at www.regulations.gov. Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-TM-21-0034, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Dr. Melissa R. Bailey, Agricultural Marketing Service, USDA, Room 2055-S, STOP 0201, 1400 Independence Avenue SW, Washington, DC 20250-0201. Comments will be

made available for public inspection at the above address during regular business hours or via the internet at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Melissa R. Bailey, Agricultural Marketing Service, at (202) 205-9356; or by email at melissa.bailey@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2021, President Biden issued Executive Order 14017, “America’s Supply Chains” (86 FR 11849) (E.O. 14017). E.O. 14017 focuses on the need for resilient, diverse, and secure supply chains to ensure U.S. economic prosperity and national security. Such supply chains are needed to address conditions that can reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services. In relevant part, E.O. 14017 directs that, within one year, the Secretary shall submit a report to the President, through the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP), on the supply chains for the production of agricultural commodities and food products. This notice requests comments and information from the public to assist USDA in preparing the report required by E.O. 14017. Further, USDA will use public comments received through this notice to inform our thinking regarding how available authorities and funding related to food supply chain resilience can help to increase durability and resilience within the U.S. food supply. We are particularly interested in comments addressing local and regional food systems, creating new market opportunities (including for value-added agriculture and value-added products), facilitating fair and competitive markets (including traceability and supply chain transparency), advancing efforts to transform the food system, meeting the needs of the agricultural workforce, supporting and promoting consumers’ nutrition security, particularly for low-income populations, and supporting the needs of socially disadvantaged and small to mid-sized producers and processors.

Extension of Comment Period Deadline

This document notifies the public that AMS is extending the comment period on the Notice on Supply Chains for the Production of Agricultural Commodities and Food Products, 86 FR 20652 (Apr. 21, 2021) from May 21, 2021 to June 21, 2021. Comments previously submitted during the initial 30-day comment period [April 21, 2021–May 21, 2021] need not be resubmitted, as these comments are already incorporated into the public record.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021-10351 Filed 5-14-21; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Qualified Products Lists for Fire Chemicals for Wildland Fire Management

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, *Qualified Products Lists for Fire Chemicals for Wildland Fire Management*.

DATES: Comments must be received in writing on or before July 16, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to David Haston, Branch Chief, Equipment and Chemicals, US Forest Service, National Interagency Fire Center, 3833 S Development Avenue, Boise, Idaho 83705.

Comments also may be submitted via facsimile to 208-387-5398 or by email to: david.haston@usda.gov. Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary

information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, in Boise, Idaho during normal business hours. Visitors are encouraged to call ahead to 208-387-5512 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to david.haston@usda.gov.

FOR FURTHER INFORMATION CONTACT: Shirley Zylstra, National Technology and Development Program, (NTDP) at (406) 329-4859 or David Haston, National InterAgency Fire Center at (208) 387-5642. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products Lists for Fire Chemicals for Wildland Fire Management.

OMB Number: 0596-0182.

Expiration Date of Approval: July 31, 2021.

Type of Request: Extension with no Revision of a currently approved information collection.

Abstract: The Forest Service and cooperating wildland firefighting agencies need adequate types and quantities of qualified fire chemical products available to accomplish fire management activities as safely and effectively as possible. To accomplish this objective, the Agency evaluates and pre-approves commercial wildland firefighting chemicals. The Agency is required to submit the formulations to the U.S. Fish and Wildlife Service and National Oceanic Atmospheric Administration Fisheries during the evaluation process. All products must meet the requirements of specifications identified and maintained by the Wildland Fire Chemical Systems (WFCS) staff at the National Technology & Development Program (Missoula). After a product evaluation has been

completed successfully, the product is added to the Qualified Products List (QPL) for the appropriate product type. All Federal procurements of wildland fire chemicals are made from these lists.

To initiate an evaluation, product manufacturers (or authorized suppliers) enter into an agreement with the Forest Service and pay all costs associated with the submission and evaluation of the product. Once the agreement is in place and funds are deposited to cover the associated costs, the manufacturer submits the following information to WFCS:

1. List of the specific ingredients and quantity used to prepare the product;
2. Identification of a specific company as the source of supply for each ingredient;
3. Copies of the Safety Data Sheet (SDS) for the product and for each ingredient used to prepare the product (from the company that supplies that chemical); and
4. Specific mixing requirements and performance information.

Review of the submitted information assures that the product does not contain ingredients meeting the criteria for Chemicals of Concern. Chemicals of Concern are defined as chemicals appearing on one or more of the following lists:

- Agency list of unacceptable ingredients;
- National Toxicology Program (NTP) Annual Report on Carcinogens;
- International Agency for Research on Cancer (IARC) Monographs for Potential Carcinogen;
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) List of Extremely Hazardous Substances and Their Threshold Planning Quantities;
- Resources Conservation and Recovery Act (RCRA), Acutely Hazardous and Toxic Wastes; and
- Emergency Planning and Community Right to Know (EPCRA), Toxic Release Inventory.

A risk assessment, performed at the manufacturer expense, is required. The risk assessment, performed by a third party selected by the Agency, assesses the products and levels of ingredients found in typical applications relative to human and environmental impact.

Each product submitted is tested to determine the mammalian and aquatic toxicity of the product and must meet specific levels of performance to minimize potential risk during firefighting operations. Additional tests are performed to determine the effectiveness of the product to reduce spread rate and intensity of the fire by application directly on or near the fire.

A number of product characteristics are measured over the operational performance range of the product to ensure that the product meets the needs of the firefighters in the field.

The collection of this information for each product submission is necessary due to the length of time needed to test the product (16 to 18 months) and the need to ensure that products do not pose a hazard for laboratory personnel during the evaluation prior to purchase and use. This information collection and the product evaluation must be conducted on an ongoing basis to ensure the Agency can solicit and award contracts in a timely manner to provide firefighters with safe and effective wildland fire chemical products.

Estimate of Annual Burden: 4.5 hours.

Type of Respondents: Businesses (manufacturers and suppliers) of fire chemicals for wildland fire management.

Estimated Annual Number of Respondents: 5.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 67.5 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Patricia A. Grantham,

Acting Director, Fire and Aviation Management.

[FR Doc. 2021-10347 Filed 5-14-21; 8:45 am]

BILLING CODE 3411-15-P

CIVIL RIGHTS COMMISSION**Notice of Public Meeting of the Nevada Advisory Committee**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Thursday, August 12, 2021, from 12:00 p.m. to 2:00 p.m. Pacific Time. The purpose of the meeting is to review report draft.

DATES: The meeting will be held on Thursday, August 12, 2021, from 12:00 p.m. to 2:00 p.m. PT.

WEBEX Information: Register online <https://civilrights.webex.com/meet/afortes>.

Audio: (800) 360-9505.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at afortes@usccr.gov or by phone at (202) 681-0857.

SUPPLEMENTARY INFORMATION: Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at afortes@usccr.gov in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681-0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/>

[FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ](https://www.usccr.gov/FACA/PublicViewCommitteeDetails?id=a10t0000001gzlJAAQ).

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Review Report Draft
- III. Public Comment
- VI. Next Steps
- V. Adjournment

Dated: May 12, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10355 Filed 5-14-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meetings of the Arkansas Advisory Committee**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, June 4, 2021 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss civil rights concerns related to IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, June 4, 2021 at 1 p.m. Central time.

Web Access (audio/visual): Register at: <https://bit.ly/3bsPqXh>

Phone Access (audio only): 800-360-9505, Access Code 199 997 4747

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at mwojnaroski@usccr.gov or (202) 618-4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can

expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

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 Melissa Wojnaroski at mwojnaroski@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- III. Committee Discussion: IDEA Compliance and Implementation in Arkansas Schools
- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Dated: May 11, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10265 Filed 5-14-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting via web-conference, for the purpose of finalizing their report on the impact of the COVID-19 pandemic on voting rights in the state.

DATES: The meeting will take place Monday May 17 at 9:30 a.m. Eastern time

Public Access:

- Register online (audio/visual): <https://bit.ly/3xZul7e>
- Telephone (audio only): Dial 800-360-9505; Access code: 199 041 2339

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at mwojnaroski@usccr.gov or 202-618-4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number or online through the above registration link. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons who are deaf or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at mwojnaroski@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office at 202-618-4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjPAAQ> under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

Welcome and Roll Call
Discussion & VOTE: COVID-19 & Voting Rights in Michigan
Public Comment

Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: May 11, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10266 Filed 5-14-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Oklahoma Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that the Oklahoma Advisory Committee to the Commission will hold virtual of meetings on Tuesday, May 25, 2021 from 10:00 a.m.-11:00 a.m. (CT). The purpose of the meeting is to review and approve the current draft advisory memorandum on racial disparities and policing in Oklahoma.

The meetings will be held on:

- Tuesday, May 25, 2021, at 10:00 a.m. Central Time
- To join by web conference: <https://tinyurl.com/nfm8x798>

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, DFO, at bpeery@usccr.gov or (202) 701-1376.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the Webex links above. If joining only via phone callers can expect to incur charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individual who is deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number found through registering at the web link.

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 Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the

Regional Programs Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Oklahoma Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above phone number or email.

Agenda:

Tuesday, May 25, 2021 (CT)

- Welcome & Roll Call
- Approval of Minutes
- Discussion Memo Draft
- Public Comment
- Adjournment

Dated: May 11, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10270 Filed 5-14-21; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Wednesday, September 1, 2021, from 12:00 p.m. to 2:00 p.m. Pacific Time. The purpose of the meeting is to review report draft.

DATES: The meeting will be held on Wednesday, September 1, 2021, from 12:00 p.m. to 2:00 p.m. Pacific Time.

WEBEX Information: Register online <https://civilrights.webex.com/meet/afortes>.

Audio: (800) 360-9505.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at afortes@usccr.gov or by phone at (202) 681-0857.

SUPPLEMENTARY INFORMATION: Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over

wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at afortes@usccr.gov in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681-0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Review Report Draft
- III. Public Comment
- VI. Next Steps
- V. Adjournment

Dated: May 12, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10356 Filed 5-14-21; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Tuesday, June 22, 2021, from 12:00 p.m. to 1:00 p.m. Pacific Time. The purpose of the meeting is to review report outline.

DATES: The meeting will be held on Tuesday, June 22, 2021, from 12:00 p.m. to 1:00 p.m. PT

WEBEX Information: Register online <https://civilrights.webex.com/meet/afortes>.

Audio: (800) 360-9505

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at afortes@usccr.gov or by phone at (202) 681-0857.

SUPPLEMENTARY INFORMATION: Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at afortes@usccr.gov in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681-0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the

Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Review Report Outline
- III. Public Comment
- VI. Next Steps
- V. Adjournment

Dated: May 12, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-10357 Filed 5-14-21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the South Carolina Advisory Committee (Committee) will hold a meeting via teleconference on Thursday, June 3, 2021, at 12:00 p.m. (EST) the purpose of the meeting is to for the Committee to plan its next civil rights project.

DATES: The meeting will be held on: Thursday, June 3, 2021 at 12:00 p.m. Eastern Time, <https://tinyurl.com/y46v27ky>, or Join by phone 800-360-9505 USA Toll Free.

FOR FURTHER INFORMATION CONTACT:

Barbara Delaviez at bdelaviez@usccr.gov or (202) 539-8246.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal

Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at callen@usccr.gov in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit Office at (202) 539–8246.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via <https://www.faca.database.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmPAAQ> under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Program Unit at the above email or phone number.

Agenda

1. Roll Call
2. Project Planning—update on civil assert court case
3. Public Comment
4. Adjourn

Dated: May 11, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–10268 Filed 5–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–135]

Certain Chassis and Subassemblies Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain chassis and subassemblies thereof (chassis) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of

investigation (POI) is January 1, 2020, through June 30, 2020.

DATES: Applicable May 17, 2021.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Mary Kolberg, 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) 482–3477 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2021, Commerce published its *Preliminary Determination* in the antidumping duty investigation of chassis from China.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.²

Period of Investigation

The POI is January 1, 2020, through June 30, 2020.

Scope of the Investigation

The products covered by this investigation are certain chassis and subassemblies thereof from China. For a full description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ Certain interested parties commented on the scope of the investigations as they appeared in the *Initiation Notice* and we addressed these comments in the Preliminary Scope Decision Memorandum.⁵

¹ See *Certain Chassis and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 12616 (March 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ See *Certain Chassis and Subassemblies Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 52552 (August 26, 2020) (*Initiation Notice*).

⁵ See Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments Preliminary Decision

Memorandum," dated February 9, 2021 (Preliminary Scope Decision Memorandum).
⁶ See Preliminary Scope Decision Memorandum.
⁷ See Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determinations," dated March 15, 2021 (Final Scope Decision Memorandum).
⁸ The export subsidy rate determined in the final determination of the companion CVD investigation is 11.00 percent. See *Chassis and Subassemblies*

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available 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 <http://enforcement.trade.gov/frn/>.

Changes Since the Preliminary Determination

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally adjusts the dumping margin for countervailable export subsidies. In the *Preliminary Determination*, we determined a countervailable export subsidy rate of 5.77 percent *ad valorem* based on the export buyer's credit. However, for the final determination of the concurrent CVD investigation, Commerce adjusted its calculation of the export subsidy rate because we determined that CIMC benefitted from several subsidy programs contingent on exports totaling 11.00 percent *ad valorem* for the China-wide entity. Accordingly, Commerce adjusted the calculated estimated weighted-average dumping margin for this investigation by the offset.⁸

Memorandum," dated February 9, 2021 (Preliminary Scope Decision Memorandum).

⁶ See Preliminary Scope Decision Memorandum.

⁷ See Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determinations," dated March 15, 2021 (Final Scope Decision Memorandum).

⁸ The export subsidy rate determined in the final determination of the companion CVD investigation is 11.00 percent. See *Chassis and Subassemblies*

China-Wide Entity and Use of Adverse Facts Available

We continue to find that the use of facts available is warranted in determining the rate of the China-wide entity pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act. Further, use of adverse facts available (AFA) is warranted because the China-wide entity did not cooperate to the best of its ability to comply with our request for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).

The China-wide entity includes mandatory respondents Dongguan CIMC Vehicle Co., Ltd. and Qingdao CIMC Special Vehicles Co., Ltd. (collectively, CIMC) and Guangdong Fuwa Heavy Industries Co., Ltd. (Fuwa), as well as the companies that received, but did not complete, Commerce’s quantity and value questionnaire. Because CIMC submitted its supplemental questionnaire responses in an untimely manner, necessary information regarding our separate rate inquiries is not available on the record. Further, Fuwa did not provide information on all shareholders and ultimate shareholders. Therefore, we continue to find that

CIMC and Fuwa have not demonstrated eligibility for a separate rate. Because none of the companies responded to the best of their ability to Commerce’s questionnaires, we assigned the highest margin alleged in the petition, 188.05 percent, to the China-wide entity.

Combination Rates

Because no companies qualified for a separate rate, producer/exporter combination rates were not calculated.

Final Determination

Commerce determines that the estimated weighted-average dumping margin is as follows:

Producer/exporter	Estimated weighted-average dumping margin (percent)	Estimated weighted-average dumping margin adjusted for export subsidy offset(s) (percent)
China-Wide Entity	188.05	177.05

Disclosure

The dumping margin calculations in the *Preliminary Determination* were based on AFA.⁹ As noted above, there are no changes to the calculations for the *Final Determination*. Thus, no additional disclosure is necessary for this final determination.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise as described in the “Scope of the Investigation” section entered, or withdrawn from warehouse, for consumption, on or after March 4, 2021, which is the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) For all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide

entity; and (2) for all third-country exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or China-wide entity) that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, there was no demonstration on the record that an adjustment for domestic subsidies was warranted in the *Preliminary Determination*, which remains unchanged for the final determination.¹⁰ However, with respect to export subsidies for all respondents, Commerce issued the final determination of the concurrent CVD investigation of chassis from China, in which it found export-contingent subsidies of 11.00 percent for CIMC.¹¹ Therefore, we have deducted export

subsidies from the final margin and adjusted the cash deposit rate in the chart above. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those subsidies at this time.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative determination of sales at LTFV. Commerce will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. Because Commerce’s final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of chassis from China no later than 45 days after this final determination. If the ITC determines that such injury does exist, Commerce

Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 86 FR 15186 (March 22, 2021) (*Chassis CVD Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at 8.

⁹ See *Preliminary Determination*.

¹⁰ See section VII. Adjustment under Section 777A(f) of the Act in the *Preliminary Determination* PDM.

¹¹ See *Chassis CVD Final Determination* IDM at 8.

will issue an AD order directing CBP to assess, upon further instructions by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section of this notice.

Notification Regarding Administrative Protective Order (APO)

This notice will serve as a final reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: May 11, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Chassis frames, or sections of chassis frames, including kingpin assemblies, bolsters consisting of transverse beams with locking or support mechanisms, goosenecks, drop assemblies, extension mechanisms and/or rear impact guards;
- Running gear assemblies or axle assemblies for connection to the chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may or may not include suspension(s) (mechanical or pneumatic), wheel end components, slack adjusters,

axles, brake chambers, locking pins, and tires and wheels;

- Landing gear assemblies, for connection to the chassis frame, capable of supporting the chassis when it is not engaged to a tractor; and
- Assemblies that connect to the chassis frame or a section of the chassis frame, such as, but not limited to, pintle hooks or B-trains (which include a fifth wheel), which are capable of connecting a chassis to a converter dolly or another chassis.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes an unfinished chassis for purposes of this investigation.

Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems.

Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.

Individual components entered and sold by themselves are not subject to the investigation, but components entered with or for further assembly with a finished or unfinished chassis are subject merchandise. A finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly.

This scope excludes dry van trailers, refrigerated van trailers and flatbed trailers. Dry van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself. Refrigerated van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems. Flatbed (or platform) trailers consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.

The finished and unfinished chassis subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8716.39.0090 and 8716.90.5060. Imports of

finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Adjustment under Section 777A(f) of the Act
- VI. Adjustment to Cash Deposit Rate for Export Subsidies
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Discussion of the Issues
 - Comment 1: Whether Total AFA is Warranted for CIMC
 - Comment 2: Whether CIMC is Eligible for a Separate Rate
- IX. Recommendation

[FR Doc. 2021-10346 Filed 5-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council; Solicitation of Applications

AGENCY: SelectUSA, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the United States Investment Advisory Council.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the United States Investment Advisory Council. The purpose of the Board is to advise the Secretary of Commerce on strategies to attract and retain foreign direct investment to the United States.

DATES: Applications for immediate consideration for membership must be received by the Office of SelectUSA by 5:00 p.m. Eastern Daylight Time (EDT) on Friday, June 30, 2021. The International Trade Administration (ITA) will continue to accept applications under this notice for two years from the deadline to fill any vacancies.

ADDRESSES: Please submit application information by email to IAC@trade.gov.

FOR FURTHER INFORMATION CONTACT: Rachel David, SelectUSA, U.S. Department of Commerce; telephone: (202) 302-6858; email: IAC@trade.gov.

SUPPLEMENTARY INFORMATION: The United States Investment Advisory

Council (IAC) is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., to advise the Secretary of Commerce (Secretary) on matters relating to the promotion and retention of foreign direct investment in the United States (FDI).

SelectUSA is accepting applications for membership on the IAC. The IAC functions solely as an advisory committee. The IAC shall advise the Secretary on U.S. government policies and programs that affect FDI; identify and recommend programs and policies to help the United States attract and retain FDI; and recommend ways to support the position of the United States as the world's preeminent destination for FDI. The IAC shall act as a liaison among the stakeholders represented by the membership and shall provide a forum for the stakeholders on current and emerging issues regarding FDI. The IAC shall report to the Secretary on its activities and recommendations regarding FDI. In creating its reports, the IAC should survey and evaluate the investment and investment-facilitating activities of stakeholders, should identify and examine specific problems facing potential foreign investors, and should examine the needs of stakeholders to inform the IAC's efforts. The IAC should recommend specific solutions to the problems and needs that it identifies.

The IAC shall consist of no more than twenty members appointed by the Secretary. Members shall represent companies and organizations investing, seeking to invest, seeking foreign investors, or facilitating investment across many sectors, including but not limited to:

U.S.-incorporated companies that are majority-owned by foreign companies or by a foreign individual or individuals, or that generate significant foreign direct investment (e.g., through their supply chains); U.S. companies or entities whose business includes FDI-related activities or the facilitation of FDI; and Economic development organizations and other U.S. governmental and non-governmental organizations and associations whose missions or activities include the promotion or facilitation of FDI.

Members shall be selected based on their ability to carry out the objectives of the IAC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the IAC is balanced in terms of points of view, demographics, industry subsector, geography of the source and the destination of the FDI, and company size. Members shall represent a broad

range of products and services and shall be drawn from large, medium, and small enterprises, private-sector organizations involved in investment, and other investment-related entities including non-governmental organizations, associations, and economic development organizations.

Priority may be given to executives (Chief Executive Officer, Executive Chairman, President, or comparable level of responsibility).

Members shall serve in a representative capacity, representing the views and interests of their sponsoring entity and those of their particular sector (if applicable). Members are not special government employees and will receive no compensation for their participation in IAC activities. Members will not be reimbursed for travel expenses related to IAC activities. Appointments to the IAC shall be made without regard to political affiliation. Because the IAC will advise the Secretary on U.S. international competitiveness in attracting and retaining FDI, each member must be a U.S. national.

Each member shall be appointed for a term of two years and will serve at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the IAC and that his/her knowledge and advice is still needed.

The Secretary shall designate a Chair and Vice Chair from among the members.

The IAC will meet a minimum of two times a year with, to the extent practical, additional meetings called at the discretion of the Secretary or his/her designee. Meetings will be held in Washington, DC or elsewhere in the United States, or by teleconference, as feasible. Members are expected to attend a majority of IAC meetings.

To be considered for membership, submit the following information by 5:00 p.m. EDT on June 30, 2021 to the email address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on the sponsoring entity's letterhead containing a brief statement of why the applicant should be considered for membership on the IAC. This sponsor letter should also address the applicant's experience and leadership related to foreign direct investment.
3. The applicant's personal resume and short bio (less than 300 words).
4. An affirmative statement that the applicant meets all eligibility criteria,

including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. Information regarding the ownership and control of the sponsoring entity, including the stock holdings as appropriate.

6. The sponsoring entity's size, place of incorporation, product or service line, major markets in which the entity operates, and the entity's export or import experience.

7. A profile of the entity's foreign direct investment activities, including investment activities, investment plans, investment-facilitation activities, or other foreign direct investment activities.

8. Brief statement describing how the applicant will contribute to the work of the IAC based on his or her unique experience and perspective (not to exceed 100 words).

9. All relevant contact information, including mailing address, fax, email, phone number, and support staff information where relevant.

Bill Burwell,

Deputy Executive Director, Select USA.

[FR Doc. 2021-10358 Filed 5-14-21; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-831]

Methionine From France: Final Determination of Sales at Less Than Fair Value and Final Partial Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of methionine from France are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2019, through June 30, 2020. Further, Commerce determines that critical circumstances exist for Adisseo France SAS and Commentary.

DATES: Applicable May 17, 2021.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2638.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2021, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of methionine from France.¹ Commerce invited interested parties to comment on the *Preliminary Determination*. A summary of the events that occurred since Commerce published the *Preliminary Determination*, may be found in the Issues and Decision Memorandum.²

Scope of the Investigation

The product covered by this investigation is methionine from France. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

Commerce did not receive scope comments from interested parties during the course of this investigation. Therefore, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination*. See Appendix I for the final scope of the investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the sections of the Issues and Decision Memorandum are in Appendix II of 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 <http://enforcement.trade.gov/frn>.

Verification

Because Adisseo France SAS and Commentry (collectively, Adisseo) stated prior to the *Preliminary Determination* that it would not continue to respond to Commerce's request for information, we did not

¹ See *Preliminary Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 86 FR 12627 (March 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Methionine from France," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

conduct a verification of Adisseo's information.

Use of Adverse Facts Available

In the *Preliminary Determination*, Commerce found that Adisseo failed to comply with Commerce's request for information, which significantly impeded the investigation. Further, Commerce found that Adisseo failed to cooperate to the best of its ability in this investigation. Therefore, in the *Preliminary Determination*, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), Commerce assigned Adisseo an estimated weighted-average dumping margin based on adverse facts available (AFA). We have continued to find that the application of AFA, pursuant to sections 776(a) and (b) of the Act is warranted in determining Adisseo's estimated weighted-average dumping margin.

In the *Preliminary Determination*, as AFA, we assigned Adisseo, as an estimated weighted-average dumping margin, a rate equal to the highest individual dumping margin based on an average-to-average comparison and based on the record information submitted by Adisseo. Because this rate is not secondary information, but rather is based on information obtained in the course of the investigation, Commerce need not corroborate this rate pursuant to section 776(c) of the Act.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has determined the estimated weighted-average dumping margin for the sole respondent, Adisseo, entirely under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the

all-others rate as a simple average of the alleged dumping margins from the petition.³ However, there is only one dumping margin alleged in the petition (*i.e.*, 16.17 percent) for this investigation. Therefore, we used that rate as the estimated weighted-average dumping margin for all other producers and exporters, (*i.e.*, all-others rate).

Final Partial Affirmative Determination of Critical Circumstances

Consistent with the *Preliminary Determination*⁴ and in accordance with section 773(e) of the Act and 19 CFR 351.206, Commerce continues to determine that critical circumstances exist with respect to imports of methionine produced and exported by Adisseo. Furthermore, Commerce continues to find that critical circumstances do not exist with respect to imports of methionine produced and exported by all other producers and exporters from France.⁵

Final Determination

Pursuant to section 735 of the Act, the final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Adisseo France SAS and Commentry	43.82
All Others	16.17

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination, in accordance with 19 CFR 351.224(b). However, because

³ See, e.g., *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014); and *Polyethylene Terephthalate Resin from Pakistan: Final Determination of Sales at Less Than Fair Value*, 83 FR 48281, 48282 (September 24, 2018).

⁴ See *Preliminary Determination* at 12628.

⁵ *Id.*

Commerce made no changes to the margin calculations in the *Preliminary Determination*, there are no new calculations to disclose.⁶

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of methionine from France, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after March 4, 2021 the date of publication in the *Federal Register* of the affirmative *Preliminary Determination*.

Section 735(c)(4) of the Act provides that if there is an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce finds that critical circumstances exist for imports of subject merchandise produced and exported by Adisseo. Therefore, in accordance with section 735(c)(4) of the Act, suspension of liquidation shall continue to apply to unliquidated entries of subject merchandise produced and exported by Adisseo that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of the *Preliminary Determination* in the *Federal Register*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the following: (1) The cash deposit rate for Adisseo will be equal to the respondent-specific estimated weighted-average dumping margin listed for Adisseo in the table; (2) if the exporter is not identified in the table above but Adisseo is the producer, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for Adisseo; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated

weighted-average dumping margin listed in the table above.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of methionine from France no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Notification Regarding Administrative Protective Orders

This notice will serve as a final reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: May 10, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula C₅H₁₁NO₂S, liquid HMTBa has the chemical formula C₅H₁₀O₃S, and dry HMTBa has the chemical formula (C₅H₉O₃S)₂Ca.

Subject merchandise also includes methionine processed in a third country including, but not limited to, refining, converting from liquid to dry or dry to liquid form, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope methionine or dl-Hydroxy analogue of dl-methionine.

The scope also includes methionine that is commingled (*i.e.*, mixed or combined) with methionine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from this investigation is United States Pharmacopoeia (USP) grade methionine. In order to qualify for this exclusion, USP grade methionine must meet or exceed all of the chemical, purity, performance, and labeling requirements of the United States Pharmacopoeia and the National Formulary for USP grade methionine.

Methionine is currently classified under subheadings 2930.40.00.00 and 2930.90.46.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Methionine has the Chemical Abstracts Service (CAS) registry numbers 583-91-5, 4857-44-7, 59-51-8 and 922-50-9. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Sections in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Final Partial Affirmative Determination of Critical Circumstances
- IV. Discussion of the Issue: Whether To Retain Adisseo's BPI on the Record
- V. Recommendation

[FR Doc. 2021-10264 Filed 5-14-21; 8:45 am]

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⁶ See Commerce's Memorandum, "Final Determination in the Antidumping Duty Investigation of Methionine from France: AFA Rate for Adisseo France SAS," dated concurrently with this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Jindal Poly Films Limited of India (Jindal), producer and/or exporter of polyethylene terephthalate film, sheet, and strip (PET film) from India, received countervailable subsidies during the period of review (POR), January 1, 2018, through December 31, 2018.

DATES: Applicable May 17, 2021.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Konrad Ptaszynski, 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) 482-1395 or (202) 482-6187, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on November 23, 2020.¹ We invited interested parties to comment on our *Preliminary Results*. On February 25, 2021, Commerce extended the deadline to issue the final results of this review until May 21, 2021.² For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.³

Scope of the Order

The merchandise covered by the order is PET film. For a complete description of the scope, see the Issue and Decision Memorandum.

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2018*; 85 FR 74679 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2018,” dated February 25, 2021.

³ See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order of Polyethylene Terephthalate Film, Sheet and Strip from India,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised parties’ briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached to this notice as an appendix. 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 <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>.

Changes Since the Preliminary Results

Based on the comments received from interested parties, we made changes to the net subsidy rate calculated for the mandatory respondent. For a discussion of these issues, see the Issues and Decision Memorandum.

Methodology

Commerce conducted this 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 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.⁴ For a description of the methodology underlying all of Commerce’s conclusions, see the Issues and Decision Memorandum.

Final Results of Review

We determine the following net countervailable subsidy rate for the period January 1, 2018, through December 31, 2018:

Manufacturer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Jindal Poly Films Limited of India	11.67

Disclosure

Commerce intends to disclose the calculations performed for the final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Requirements

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon

⁴ 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.

issuance of these final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue 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).

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 amount shown above for Jindal 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, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

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: May 11, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Period of Review

- V. Subsidies Valuation Information
 VI. Use of Facts Otherwise Available and Adverse Inferences
 VII. Analysis of Programs
 VIII. Analysis of Comments
 Comment 1: Whether Commerce Should Find the Package Scheme of Incentives to be a Countervailable Subsidy
 Comment 2: Whether Commerce has Correctly Determined the Benefits under the MEIS Program
 Comment 3: Whether Commerce has Correctly Determined the Benefits under the SEIS Program
 Comment 4: Whether Commerce used the Correct Long-Term Rupee-Denominated Interest Rates
 IX. Recommendation

[FR Doc. 2021-10350 Filed 5-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB090]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet via web conference from June 1, 2021, through June 16, 2021.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, June 1, 2021, and continue through Friday, June 4, 2021. The Council's Advisory Panel (AP) will begin at 8 a.m. on Thursday, June 3, 2021, through Friday, June 4, 2021, and on Monday, June 7, 2021, through Wednesday, June 9, 2021. The Council will meet on Wednesday, June 9, 2021, through Friday, June 11, 2021, and on Monday, June 14, 2021, through Wednesday, June 16, 2021. All times listed are Alaska Time.

ADDRESSES: The meetings will be by web conference. Join online through the links at <https://www.npfmc.org/upcoming-council-meetings>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501-2252; telephone: (907) 271-2809. Instructions for attending the meeting via web conference are given under Connection Information below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: diana.evans@noaa.gov. For technical

support, please contact our administrative staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, June 1, 2021, Through Friday, June 4, 2021

The SSC agenda will include the following issues:

- (1) Observer Report on 2020 Deployment during COVID
- (2) BSAI Crab—SAFE report, ABC/OFL for AIGKC and PIBKC; Plan Team report
- (3) BSAI Pacific cod Trawl CV LAPP—Initial Review
- (4) Finalize research priorities process
- (5) BS Fishery Ecosystem Plan—FEP Team report, Climate Change Taskforce report
- (6) Report from SSC Workshop on Risk Table Advice—Discuss
- (7) AFSC Report

The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/2105> prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Thursday, June 3, 2021, Through Friday, June 4, 2021; Monday, June 7, 2021 Through Wednesday, June 9, 2021

The Advisory Panel agenda will include the following issues:

- (1) Observer Report on 2020 Deployment during COVID—Review; PCFMAC and FMAC reports
- (2) Trawl EM analysis—Adopt alternatives, Trawl EM Committee report
- (3) BSAI Crab—SAFE report, ABC/OFL for AIGKC, PIBKC; Plan Team report
- (4) BSAI Pacific cod small boat access—Discussion Paper
- (5) Sablefish trawl overages—Discussion Paper (T)
- (6) BS Fishery Ecosystem Plan—FEP Team report, Climate Change Taskforce report
- (7) BSAI Pacific cod Trawl CV LAPP—Initial Review
- (8) Staff Tasking

Wednesday, June 9, 2021, Through Friday, June 11, 2021; Monday, June 14, 2021, Through Wednesday, June 16, 2021

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

- (1) All B Reports (Executive Director, NMFS Management, NOAA GC, NOAA Enforcement, AFSC, ADF&G, USCG, USFWS, AP, SSC reports)
- (2) Observer Report on 2020 Deployment during COVID—Review; PCFMAC and FMAC reports
- (3) Trawl EM analysis—Adopt alternatives, Trawl EM Committee report
- (4) BSAI Crab—SAFE report, ABC/OFL for AIGKC and PIBKC; Plan Team report
- (5) BSAI Pacific cod Trawl CV LAPP—Initial Review
- (6) BSAI Pacific cod small boat access—Discussion Paper
- (7) Sablefish trawl overages—Discussion Paper (T)
- (8) BS Fishery Ecosystem Plan—FEP Team report, Climate Change Taskforce report
- (9) Report from SSC Workshop on Risk Table Advice
- (10) Staff Tasking

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by telephone only. Connection information will be posted online at: <https://www.npfmc.org/upcoming-council-meetings>. For technical support, please contact our administrative staff, email: npfmc.admin@noaa.gov.

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at <https://www.npfmc.org/upcoming-council-meetings>. The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from May 12, 2021 to May 26, 2021 and closes at 5 p.m. Alaska Time on May 26th.

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

Dated: May 12, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-10312 Filed 5-14-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB084]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting via webinar of its Ad Hoc Red Snapper & Grouper-Tilefish Individual Fishing Quota (IFQ) Advisory Panel (AP).

DATES: The meeting will convene on Wednesday, June 2, 2021, from 9 a.m. to 5 p.m., EDT. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will take place via webinar; you may register by visiting www.gulfcouncil.org and clicking on the AP meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist ava.lasseter@gulfcouncil.org and Dr. Assane Diagne, Economist, assane.diagne@gulfcouncil.org, Gulf of Mexico Fishery Management Council telephone: (813) 348–1630. The Council's website, www.gulfcouncil.org also has details on the proposed agenda and other meeting materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Tuesday, June 2, 2021; 9 a.m.–5 p.m. EDT

The Advisory Panel will begin with Welcome and Introductions, Adoption of Agenda, Approval of November 7, 2018, Meeting Summary, and Scope of work.

The AP will receive presentations on Red Snapper-IFQ and Grouper-Tilefish-IFQ Review and for Amendments 36B and 36C, followed by discussion and recommendations and public comments.

The AP will discuss any Other Business items.

—Meeting Adjourns

You may attend the meeting via webinar by visiting www.gulfcouncil.org

and clicking on the AP meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on www.gulfcouncil.org as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency at least 5 working days prior to the meeting.

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

Dated: May 12, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–10311 Filed 5–14–21; 8:45 am]

BILLING CODE 3510–22–P

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 Program Life Cycle Evaluation—Volunteer Generation Fund Grant Program Evaluation**

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service, operating as AmeriCorps, is proposing a new information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 16, 2021.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention Lily Zandniapour, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through www.regulations.gov.

Comments submitted in response to this notice may be made available to the public through regulations.gov. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Xiaodong Zhang, 703–251–0883, or by email at xiaodong.zhang@icf.com.

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps Program Life Cycle Evaluation—Volunteer Generation Fund Bundled Evaluation.

OMB Control Number: TBD. Type of Review: New.

Respondents/Affected Public: Grantees, program implementers, volunteer organizations and volunteers.

Total Estimated Number of Annual Responses: 971 respondents.

Total Estimated Number of Annual Burden Hours: 327 hours.

Abstract: The purpose of this evaluation is to understand grantees' use of Volunteer Generation Fund (VGF) grant program funds to support volunteer organizations and determine how effective grantees' approaches are at enhancing the capacity of these organizations, increasing volunteer recruitment and retention, and increasing implementation of volunteer management best practices within their states. The research questions for this evaluation are:

1. What are the grantees' approaches for utilizing VGF funds to improve volunteer recruitment, retention, and support of volunteers within their states and among volunteer organizations?
2. What are promising practices and challenges in implementing these programs?
3. What are preliminary outcomes of these programs on volunteer

organizations? AmeriCorps will conduct a bundled evaluation of grantees that are implementing VGF grants. Bundling allows AmeriCorps to combine a group of small programs across different funding streams with similar program models and intended outcomes into a single evaluation. Spanning 27 months, the evaluation will work with 15 grantees to examine program design, implementation, and outcomes using surveys, interviews, and focus groups with a wide range of stakeholders including grantee staff, program implementers, volunteers, and beneficiaries. This is a new information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Dated: May 12, 2021.

Lily Zandniapour,

Research and Evaluation Manager.

[FR Doc. 2021-10333 Filed 5-14-21; 8:45 am]

BILLING CODE 6050-28-P

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 Program Life Cycle Evaluation—Opioid Recovery Coach Model Bundled Evaluation

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service, operating as AmeriCorps, is proposing a new information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 16, 2021.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention Lily Zandniapour, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through www.regulations.gov.

Comments submitted in response to this notice may be made available to the public through [regulations.gov](https://www.regulations.gov). For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT:

Xiaodong Zhang, 703-251-0883, or by email at xiaodong.zhang@icf.com.

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps Program Life Cycle Evaluation—Opioid

Recovery Coach Model Bundled Evaluation.

OMB Control Number: TBD. Type of Review: New.

Respondents/Affected Public: Grantees, beneficiaries, and peer recovery coaches.

Total Estimated Number of Annual Responses: 434 respondents.

Total Estimated Number of Annual Burden Hours: 188 hours.

Abstract: The purpose of this evaluation is to study questions regarding grantees' use of the peer recovery coach model and better determine how effective the model is at increasing individuals' recovery capital, increasing attendance of health services, and decreasing incidence of substance use as well as on the peer recovery coaches and grantee organizations. The research questions for this evaluation are:

1. Determine what recovery coach models look like (activity, setting, modality, etc.).
2. Describe promising practices and challenges in implementing these models.

3. Measure the effectiveness of the recovery coach model in improving outcomes for grantee organizations, recovery coaches, and beneficiaries.

AmeriCorps will conduct a bundled evaluation of grantees that are implementing opioid recovery coaching models. Bundling allows AmeriCorps to combine a group of small programs across different funding streams with similar program models and intended outcomes into a single evaluation. Spanning 27 months, the evaluation will work with 14 grantees to examine program design, implementation, and outcomes using surveys, interviews, and focus groups with a wide range of stakeholders, including grantee staff, volunteers who support the peer recovery coach model, beneficiaries, and staff at organizations which partner with grantees. This is a new information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Dated: May 12, 2021.

Lily Zandniapour,

Research and Evaluation Manager.

[FR Doc. 2021-10330 Filed 5-14-21; 8:45 am]

BILLING CODE 6050-28-P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Privacy Act of 1974; System of Records

AGENCY: Council of the Inspectors General on Integrity and Efficiency (CIGIE).

ACTION: Notice of a new system of records.

SUMMARY: CIGIE proposes to establish a system of records that is subject to the Privacy Act of 1974. Pursuant to Public Law 116-136, CIGIE proposes this system of records in furtherance of the statutory mandate of CIGIE's Pandemic Response Accountability Committee (PRAC) to conduct oversight of the funds disseminated per the Coronavirus Aid, Relief, and Economic Security Act (CARES Act); the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020; the Families First Coronavirus Response Act; divisions M and N of the Consolidated Appropriations Act of 2021; and any other act primarily making appropriations for Coronavirus response and related activities.

DATES: This proposal will be effective without further notice on June 16, 2021 unless comments are received that

would result in a contrary determination.

ADDRESSES: Submit comments identified by "CIGIE-6" by any of the following methods:

1. *Mail:* Council of Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC, 20006. ATTN: Virginia Grebasch/CIGIE-6, Notice of New System of Records.

2. *Email:* comments@cigie.gov.

FOR FURTHER INFORMATION CONTACT:

Virginia Grebasch, Senior Counsel, Pandemic Response Accountability Committee, Council of the Inspectors General on Integrity and Efficiency, (202) 292-2600 or comments@cigie.gov.

SUPPLEMENTARY INFORMATION: In 2008, Congress established CIGIE as an independent entity within the executive branch in order to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspector General. CIGIE's membership is comprised of all Inspectors General whose offices are established under the Inspector General Act of 1978, as amended, 5 U.S.C. app (IG Act), as well as the Controller of the Office of Federal Financial Management, a designated official of the Federal Bureau of Investigation (FBI), the Director of the Office of Government Ethics, the Special Counsel of the Office of Special Counsel, the Deputy Director of the Office of Personnel Management, the Deputy Director for Management of the Office of Management and Budget (OMB), and the Inspectors General of the Office of the Director of National Intelligence, Central Intelligence Agency, Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and the Architect of the Capitol. The Deputy Director for Management of OMB serves as the Executive Chairperson of CIGIE.

Section 15010 of Public Law 116-136, established the PRAC as a committee within CIGIE. The mission of the PRAC is to promote transparency and conduct and support oversight to: (1) Prevent and detect fraud, waste, abuse, and mismanagement of covered funds; and (2) mitigate major risks that cut across programs and agencies with respect to covered funds. The term "covered funds" means any funds, including but not limited to loans, that are made available in any form to any non-Federal entity, not including an individual, under: The CARES Act; the Coronavirus

Preparedness and Response Supplemental Appropriations Act of 2020; the Families First Coronavirus Response Act; divisions M and N of the Consolidated Appropriations Act of 2021; or any other act primarily making appropriations for the Federal Government's Coronavirus response and related activities.

The new system of records described in this notice, the PRAC Accountability Data System (CIGIE-6), will enable CIGIE to carry out its responsibilities to conduct oversight of covered funds and the Coronavirus response. In accordance with 5 U.S.C. 552a(r), CIGIE has provided a report of this new system of records to OMB and to Congress. The new system of records reads as follows:

SYSTEM NAME AND NUMBER:

PRAC Accountability Data System (PADS)—CIGIE-6.

SECURITY CLASSIFICATION:

Controlled Unclassified Information.

SYSTEM LOCATION:

The location of paper records contained within the PADS is the headquarters of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), 1717 H Street NW, Suite 825, Washington, DC 20006. Records maintained in electronic form are principally located in contractor-hosted data centers in the United States. Contact the System Manager identified below for additional information.

SYSTEM MANAGER(S):

Executive Director, Pandemic Response Accountability Committee, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006, (202) 292-2600, cigie.information@cigie.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app (IG Act); 5 U.S.C. 301; 44 U.S.C. 3101; Public Law 116-136; Public Law 116-123; Public Law 116-127; and any other act primarily making appropriations for Coronavirus response and related activities.

PURPOSE(S) OF THE SYSTEM:

To carry out the PRAC's responsibilities to conduct oversight of any funds, including but not limited to loans, that are made available in any form to any non-Federal entity, not including an individual, under: Public Law 116-136; Public Law 116-123; Public Law 116-127; or any other act primarily making appropriations for Coronavirus response and related

activities (Coronavirus Funds). The term "Coronavirus response" means the Federal Government's response to the nationwide public health emergency declared by the Secretary of Health and Human Services, retroactive to January 27, 2020, pursuant to 42 U.S.C. 247d as a result of confirmed cases of the novel Coronavirus, COVID-19, in the United States (Coronavirus Response).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals acting in a personal capacity who relate to PRAC efforts undertaken in support of its mission to conduct and support oversight of Coronavirus Funds and the Coronavirus Response to prevent and detect fraud, waste, abuse, and mismanagement and mitigate major risks that cut across programs and agencies. Individuals include but are not limited to those who have applied for, sought, or received Federal funds. In addition, these individuals include:

- (a) Individuals who are or have been the subject of investigations or other inquiries identified by or submitted to the PRAC;
- (b) Individuals who are or have been witnesses, complainants, or informants in investigations or other inquiries identified by or submitted to the PRAC;
- (c) Individuals who are or have been potential subjects or parties to an investigation or other inquiry identified by or submitted to the PRAC;
- (d) Individuals who are or have been related to entities or individuals that are or have been a subject of, potential subject of, or party to an investigation or other inquiry identified by or submitted to the PRAC;
- (e) Individuals who have or have had increased risk factors indicating they may have been involved with possible fraud, waste, abuse, mismanagement, or improper payments related to Federal funds; and
- (f) Individuals who are or have been related to entities or individuals that have or have had increased risk factors indicating they may have been involved with possible fraud, waste, abuse, mismanagement, or improper payments related to Federal funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains records that contribute to the oversight of Coronavirus Funds and the Coronavirus Response and effective oversight of fraud, waste, abuse, and mismanagement and mitigation of major risks that cut across programs and agencies related to Coronavirus Funds and the Coronavirus Response. These records may include, but are not limited

to, records concerning: Coronavirus Funds and other Federal funding; the Coronavirus Response; individuals in their personal capacity or individuals who are employees or representatives of businesses, corporations, tribal governments, not-for-profit organizations, or other organizations that have applied for, sought, or received Coronavirus Funds or have been involved in any capacity in the Coronavirus Response. Such records may include, but are not limited to, these individuals' home addresses, telephone numbers, social security numbers or tax identifications numbers, company business addresses, business financial information and records, bank account information, payroll records, personal contact information, business affiliations, and employment history. The records may further include:

- (a) Letters, memoranda, and other documents describing complaints, derogatory information, or alleged criminal, civil, or administrative misconduct; and
- (b) General intelligence and relevant data, leads for the PRAC or Offices of Inspector General (or other applicable oversight and law enforcement entities), reports of investigations and related exhibits, statements and affidavits, and records obtained or generated during an investigation or other inquiry, including but not limited to risk-based analytical research.

RECORD SOURCE CATEGORIES:

Publicly and/or commercially available data sets and other source material; Federal agencies; and individuals and entities, including states and local jurisdictions, tribal governments, businesses, corporations, and other organizations, that have applied for, sought, or received Coronavirus Funds or other Federal funds or have been involved in any capacity in the Coronavirus Response. The subjects of investigations and other inquiries; individuals and entities with which the subjects of investigations and other inquiries are associated; Federal, state, local, and foreign law enforcement and non-law enforcement agencies and entities; private citizens; witnesses; and informants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or portions of the records or information contained in this system may specifically be disclosed outside of CIGIE as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To a Member of Congress in response to an inquiry from that Member made at the request of the individual. In such cases, however, the Member's right to a record is no greater than that of the individual.

B. If the disclosure of certain records to the Department of Justice (DOJ) is relevant and necessary to litigation, CIGIE may disclose those records to the DOJ. CIGIE may make such a disclosure if one of the following parties is involved in the litigation or has an interest in the litigation:

1. CIGIE or any component thereof; or
2. Any employee or former employee of CIGIE in his or her official capacity; or
3. Any employee or former employee of CIGIE in his or her individual capacity when the DOJ has agreed to represent the employee; or
4. The United States, if CIGIE determines that litigation is likely to affect CIGIE or any of its components.

C. If disclosure of certain records to a court, adjudicative body before which CIGIE is authorized to appear, individual or entity designated by CIGIE or otherwise empowered to resolve disputes, counsel or other representative, party, or potential witness is relevant and necessary to litigation, CIGIE may disclose those records to the court, adjudicative body, individual or entity, counsel or other representative, party, or potential witness. CIGIE may make such a disclosure if one of the following parties is involved in the litigation or has an interest in the litigation:

1. CIGIE or any component thereof; or
2. Any employee or former employee of CIGIE in his or her official capacity; or
3. Any employee or former employee of CIGIE in his or her individual capacity when the DOJ has agreed to represent the employee; or
4. The United States, if CIGIE determines that litigation is likely to affect CIGIE or any of its components.

D. To the appropriate Federal, state, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

E. To officials and employees of any Federal agency to the extent the record contains information that is relevant to that agency's decision concerning the hiring, appointment, or retention of an employee; issuance of a security clearance; execution of a security or

suitability investigation; or classification of a job.

F. To the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To contractors, grantees, consultants, volunteers, or other individuals performing or working on a contract, interagency agreement, service, grant, cooperative agreement, job, or other activity for CIGIE and who have a need to access the information in the performance of their duties or activities for CIGIE.

H. To appropriate agencies, entities, and persons when: CIGIE suspects or has confirmed that there has been a breach of the system of records; CIGIE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, CIGIE (including its information systems, programs, and operations), the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with CIGIE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

I. To another Federal agency or Federal entity, when: CIGIE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in responding to a suspected or confirmed breach; or preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

J. To Federal agencies and independent certified public accounting firms that have a need for the information in order to audit the financial statements of CIGIE.

K. To an organization or an individual in the public or private sector if there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, or to the extent the information is relevant to the protection or life or property.

L. To officials of CIGIE, as well as CIGIE members and their employees, who have need of the information in the performance of their duties.

M. To the Office of Personnel Management (OPM) in accordance with OPM's responsibility for evaluation and oversight of Federal personnel management.

N. To appropriate agencies, entities, and persons, to the extent necessary to respond to or refer correspondence.

O. To the news media and the public, unless it is determined that release of the specific information would constitute an unwarranted invasion of personal privacy.

P. To populate public-facing government websites to promote transparency and oversight of Coronavirus Funds and the Coronavirus Response, unless it is determined that release of the specific information would constitute an unwarranted invasion of personal privacy.

Q. Disclosure may be made to (a) complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the results of the investigation or other inquiry arising from the matters about which they complained and/or with respect to which they were a victim, and (b) to an individual who has been interviewed or contacted by the PRAC pursuant to an investigation or other inquiry, to the extent that the PRAC may provide copies of that individual's statements, testimony, or records produced.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information within this system of records is maintained in paper/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name or other programmatic identifier assigned to the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information is retained and disposed of in accordance with the General Records Schedule and/or the CIGIE records schedule applicable to the record and/or otherwise required by the Federal Records Act and implementing regulations.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Paper records are located in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Part of this system is exempt from notification and access requirements pursuant to 5 U.S.C. 552a(j)(2), (k)(1),

and (k)(2). To the extent that this system is not subject to exemption, it is subject to notification and access requirements. Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing to the System Manager listed above. CIGIE has published a rule, entitled "Privacy Act Regulations," to establish its procedures relating to access, maintenance, disclosure and amendment of records which are in a CIGIE system of records per the Privacy Act, promulgated at 5 CFR part 9801 (https://www.ecfr.gov/cgi-bin/text-idx?SID=c3344b4e456f682fe915c0e982f8ce94&mc=true&tpl=/ecfrbrowse/Title05/5cfr9801_main_02.tpl).

CONTESTING RECORD PROCEDURES:

See "Records Access Procedures" above.

NOTIFICATION PROCEDURES:

See "Records Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

CIGIE has exempted this system of records from the following provisions of the Privacy Act pursuant to the general authority in 5 U.S.C. 552a(j)(2); 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G)–(H), (e)(5), and (e)(8); (f); and (g). Additionally, CIGIE has exempted this system from the following provisions of the Privacy Act pursuant to the general authority in 5 U.S.C. 552a(k)(1) and (k)(2); 5 U.S.C. 552a(c)(3); (d); (e)(1) and (e)(4)(G)–(H); and (f). See 5 CFR part 9801.

HISTORY:

N/A.

Dated: May 12, 2021

Allison C. Lerner,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

[FR Doc. 2021–10376 Filed 5–13–21; 4:15 pm]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2021–HQ–0009]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Chief of Staff of the Army announces a proposed public

information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 16, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, Office of the Deputy Chief of Staff, G-9, Soldier & Family Readiness Division, 600 Army Pentagon, Washington, DC 20310; ATTN: Jill Knaus, or call 703-695-7095.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Survivor Advisory Working Group Application; OMB Control Number 0702-0144.

Needs and Uses: The information collection requirement is necessary to assess individuals who apply to become new members of the Army's Survivor Advisory Working Group (SAWG). SAWG advisors may provide advice and recommendations regarding vital Total Army (Active Component, Army National Guard, and U.S. Army Reserve) Survivor quality of life issues. Advisors

assess how current Survivor programs and initiatives may affect the Survivor community. SAWG members are required to meet biannually for a four-day period. Additionally, members hold monthly phone calls discussion on SAWG issues.

Affected Public: Individuals or households.

Annual Burden Hours: 306.3.

Number of Respondents: 150.

Responses per Respondent: 1.167.

Annual Responses: 175.

Average Burden per Response: 1.75 hours.

Frequency: Annually.

Respondents may be surviving spouses, parents, and dependents over the age of 18 of fallen Service members. Applicants will be nominated by the Army's Survivor Outreach Services office or survivor-related Non-Federal Entities. Individuals will receive a fillable PDF application and cover letter outlining the SAWG's purpose and length of service. The staff reviews all applications and verifies the applicant is an Army Survivor. Applications are sorted into a list of 1-20 based on the criteria listed in the SAWG Charter and the list is provided to the Chief of Staff, Army (CSA) for final approval. Individuals not selected will be notified by email that they were not selected. Those selected will be notified by telephone by program manager. At the completion of the application process, the CSA will select new members to fill up to 12 positions every year the SAWG exists.

Dated: May 12, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-10343 Filed 5-14-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD-2020-OS-0106]

Submission for OMB Review; Comment Request

AGENCY: Defense Finance and Accounting Service, Department of Defense, (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 16, 2021.

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:

Angela Duncan, 571-372-7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB

Number: Dependency Statements; Parent (DD Form 137-3), Incapacitated Child Over Age 21 (DD Form 137-5), Full Time Student 21-22 Years of Age (DD Form 137-6), and Ward of a Court (DD Form 137-7); OMB Control Number 0730-0014.

Type of Request: Revision.

Number of Respondents: 14,975.

Responses per Respondent: 1.

Annual Responses: 14,975.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 7,487.50.

Needs and Uses: The information collection requirement is necessary to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or uniformed services identification and privilege card. Information regarding a parent, an incapacitated child over age 21, a student age 21-22, or a ward of a court is provided by the military member. A medical doctor or psychiatrist, college administrator, or a dependent's employer may need to provide information for claims. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed dependent's monthly expenses. DoDFMR 7000.14-R, Vol 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreased the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: May 12, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–10349 Filed 5–14–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0036]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Counterintelligence and Security Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 16, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Counterintelligence and Security Agency, Defense Counterintelligence and Security Agency, 27130 Telegraph Road, Quantico, VA 22134; ATTN: Ms. Valerie Heil, or call 703–692–3754.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Information System for Security; OMB Control Number 0704–0573.

Needs and Uses: This information collection is necessary as the DISS system requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in access determinations to sensitive/classified information and facilities.

Affected Public: Individuals or households.

Annual Burden Hours: 333,375.

Number of Respondents: 22,225.

Responses per Respondent: 45.

Annual Responses: 1,000,125.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

The Defense Information System for Security (DISS) is a DoD personnel security system and is the authoritative source for clearance information resulting in access determinations to sensitive/classified information and facilities. Collection and maintenance of personal data in DISS is required to

facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees, and contractors requiring such credentials. Facility Security Officers (FSOs) working in private companies that contract with DoD and who need access to the DISS system to update security-related information about their company's employees must complete DD Form 2962 (OMB Control Number 0704–0542). Specific uses include: Facilitation for DoD Adjudicators and Security Managers to obtain accurate up-to-date eligibility and access information on all personnel (military, civilian and contractor personnel) adjudicated by the DoD. The DoD Adjudicators and Security Managers are also able to update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information. Once granted access, the FSOs maintain employee personal information, submit requests for investigations, and submit other relevant personnel security information into DISS on over 1,000,000 contract employees annually.

Dated: May 12, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–10344 Filed 5–14–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2021–OS–0037]

Proposed Collection; Comment Request

AGENCY: The Office of the Director of Administration and Management, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Pentagon Force Protection Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be

collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 16, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to 9000 Defense Pentagon, 5B890 Washington, DC 20301, ATTN: Mr. Dajonte Holsey or call 703-571-2939.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Facilities Access Control System; OMB Control Number 0704-AAFV.

Needs and Uses: The information will be used by the Pentagon Pass Office to conduct a NCIC check of all members of the public 18 years and older that request access to the Pentagon or a Pentagon facility. The method for collecting the required information varies depending on the status of the individual making the request and the length of time that access is required.

Affected Public: Individuals or households.

Annual Burden Hours: 24,617.

Number of Respondents: 211,000.

Responses per Respondent: 1.

Annual Responses: 211,000.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

Dated: May 12, 2021.

Kayyonne T. Marston,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-10345 Filed 5-14-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

[Docket ID: DOD-2021-OS-0038]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 16, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to

obtain a copy of the proposal and associated collection instruments, please write to Defense Finance and Accounting Services, Kellen Stout, 8899 E 56th St., Indianapolis, IN 46249 or call (317) 212-1801.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Number 0730-0009.

Needs and Uses: The information collection requirement is necessary for current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995.

Affected Public: Individuals or households.

Annual Burden Hours: 5,985.

Number of Respondents: 4,500.

Responses per Respondent: 1.

Annual Responses: 4,500.

Average Burden per Response: 1.33 hours.

Frequency: On occasion.

Dated: May 12, 2021.

Kayyonne T. Marston,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-10341 Filed 5-14-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD-2021-OS-0012]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, Department of Defense, (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 16, 2021.

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:

Angela Duncan, 571–372–7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personnel Security Investigation Projection for Industry Census Survey; OMB Control Number 0704–0417.

Type of Request: Revision.

Number of Respondents: 7,999.

Responses per Respondent: 1.

Annual Responses: 7,999.

Average Burden per Response: 40 minutes.

Annual Burden Hours: 5,333.

Needs and Uses: Executive Order (E.O.) 12829, “National Industrial Security Program (NISP),” stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The Under Secretary of Defense for Intelligence assigned Defense Counterintelligence and Security Agency (DCSA) the responsibility for central operational management of NISP personnel security investigation (PSI) workload projections, and for monitoring of NISP PSI funding and investigations. The execution of the collection instrument is an essential element of DCSA’s ability to plan, program and budget for the PSI needs of NISP personnel security investigations.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal governments.

Frequency: Annually.

Respondent’s Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal**

Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: May 12, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–10348 Filed 5–14–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[EERE–2021–BT–DET–0010]

Preliminary Analysis Regarding Energy Efficiency Improvements in the 2021 International Energy Conservation Code (IECC)

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

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) is announcing the availability of a Preliminary Energy Savings Analysis of the 2021 International Energy Conservation Code (Preliminary Analysis). DOE welcomes written comments from interested parties on any subject within the scope of this Preliminary Analysis.

DATES: DOE will accept written comments and information on the Preliminary Analysis no later than June 16, 2021.

ADDRESSES: A copy of the Preliminary Analysis is available at https://www.energycodes.gov/sites/default/files/documents/2021_IECC_Preliminary_Determination_TSD.pdf. Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address:

2021iecc2021det0010@ee.doe.gov. Include docket number EERE–2021–BT–DET–0010 and/or RIN number 1904–AF15 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or

ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please the parties listed below to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Public Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket on the <http://www.regulations.gov> site can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2021-BT-DET-0010>. The <http://www.regulations.gov> web page will contain instructions on how to access all documents, including public comments, in the docket. See section III for further information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–5B, Washington, DC 20585; (202) 287–1941; Jeremiah.Williams@ee.doe.gov.

Mr. Matthew Ring; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, GC–33, Washington, DC 20585; (202) 586–2555; Matthew.Ring@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Findings
- III. Public Participation

I. Background

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for building energy conservation standards, administered by the DOE Building Energy Codes Program. (42 U.S.C. 6831

et seq.) Section 304(a)(5)(A), as amended, of ECPA provides that whenever the CABO Model Energy Code, or any successor to that code, is revised, the Secretary of Energy (Secretary) must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in residential buildings, and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833(a)(5)(A)) If the Secretary determines that the revision of the CABO Model Energy Code, or any successor thereof, improves the level of energy efficiency in residential buildings then, not later than two years after the date of the publication of such affirmative determination, each State is required to certify that it has reviewed its residential building code regarding energy efficiency, and made a determination as to whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. (42 U.S.C. 6833(a)(5)(B)) The International Energy Conservation Code (IECC) is the contemporary successor to the CABO Model Energy Code specified in ECPA.

In addition, on January 20, 2021, the President issued Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 FR 7037 (Jan. 25, 2021). The Executive Order directed DOE to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the final technical determination regarding the final technical determination regarding the 2018 IECC by May 2021. *Id.* at 86 FR 7038. In response, DOE has conducted this preliminary analysis of the 2021 IECC so that DOE's determination under section 304(a) of ECPA reflects the most recent version of the IECC, and to facilitate State and local adoption of the 2021 IECC, which will provide greater energy savings for the nation's residential buildings.

The 2021 IECC (2021 edition), the most recent edition of the IECC, was published on January 29, 2021, triggering the statutorily required DOE review process. The IECC is developed through an industry consensus process administered by the International Code Council (ICC). The ICC has an established program for regular review of the IECC, identifying whether proposed changes have energy and cost impacts, and incorporating changes approved by public officials making up the ICC governmental voting body. Updated editions of the IECC are typically published every three years. More information on the ICC code

development process is available at: <https://www.iccsafe.org/codes-tech-support/codes/code-development-process/code-development-2/>.

II. Discussion of Findings

To meet the statutory requirement, DOE conducted a Preliminary Energy Savings Analysis of the 2021 International Energy Conservation Code (Preliminary Analysis) to quantify the expected energy savings associated with the 2021 IECC. The Preliminary Analysis indicates, of the 35 proposed code changes which directly impact energy use, 29 changes resulted in a *reduction* of energy use, with 6 changes projected to *increase* energy use.

DOE's Preliminary review and analysis of the 2021 IECC identified 11 key changes which are expected to have a significant and measurable impact on energy efficiency in residential buildings. These changes are expected to increase energy savings, impact a significant fraction of new homes, and can be reasonably quantified through the established methodology. More information on these changes and their expected energy savings impacts are presented in a separate technical analysis, *Preliminary Energy Savings Analysis: 2021 IECC for Residential Buildings*.¹

Review of the 2021 IECC indicates the updated model code will increase energy efficiency in residential buildings. Residential buildings meeting the 2021 IECC (compared to the previous 2018 IECC edition) are expected to incur the following annual savings on a weighted national average basis:

- 9.38 percent of *site energy*;
- 8.79 percent of *source energy*;
- 8.66 percent of *energy costs*, and;
- 8.66 percent of *carbon emissions*.

The full Preliminary Analysis, including an assessment of the expected energy and energy cost impacts, is available via the DOE Building Energy Codes Program: https://www.energycodes.gov/sites/default/files/documents/2021_IECC_PreliminaryDetermination_TSD.pdf. DOE welcomes written comments from interested parties on this preliminary determination and supporting technical analysis.

States can experience significant benefits by updating their codes to reflect current construction standards, a total estimated \$74.34 billion in energy cost savings and 435.43 MMT of avoided CO₂ emissions in residential

¹ https://www.energycodes.gov/sites/default/files/documents/2021_IECC_PreliminaryDetermination_TSD.pdf.

buildings (cumulative 2010 through 2040), or \$3.14 billion in annual energy cost savings and 18.38 MMT in annual avoided CO₂ emissions (annually by 2030).²

III. Public Participation

DOE will accept comments, data, and information regarding the Preliminary Analysis no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting Comments via <http://www.regulations.gov>

The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable, except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through <http://www.regulations.gov>

² <https://www.energycodes.gov/about/results>. Financial benefits are calculated by applying historical and future fuel prices to site energy savings and by discounting future savings to 2016 dollars. Historical and future real fuel prices are obtained through EIA's AEO 2015 report (EIA 2015). A real discount factor of 5% is applied to discount future energy cost savings.

before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

Submitting Comments via Email

Comments and documents submitted via email also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter, including your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments. Include contact information each time you submit comments, data, documents, and other information to DOE. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign Form Letters

Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the

confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on May 10, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, May 12, 2021.

Treena V. Garrett,

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

[FR Doc. 2021-10291 Filed 5-14-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Case Number 2020-020; EERE-2020-BT-WAV-0035]

Energy Conservation Program: Decision and Order Granting a Waiver to Ningbo FOTILE Kitchen Ware Co. Ltd. From the Department of Energy Dishwashers Test Procedure

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

ACTION: Notification of decision and order.

SUMMARY: The U.S. Department of Energy ("DOE") gives notice of a Decision and Order (Case Number 2020-020) that grants to Ningbo FOTILE Kitchen Ware Co. Ltd. ("FOTILE") a waiver from specified portions of the DOE test procedure for determining the energy and water consumption of specified dishwashers. Under the Decision and Order, FOTILE is required to test and rate the specified basic models of its dishwashers in accordance

with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on May 17, 2021.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Email: AS_Waiver_Requests@ee.doe.gov.

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585-0103. Telephone: (202) 586-2588. Email: Amelia.Whiting@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for dishwashers located at title 10 of the Code of Federal Regulations ("CFR"), part 430, subpart B, appendix C1 that addresses the issues presented in this waiver. At such time, FOTILE must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

In accordance with section 430.27(f)(2) of title 10 of the CFR, DOE hereby provides notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants FOTILE a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix C1 for specified basic models of dishwashers, and provides that FOTILE must test and rate such products using the alternate test procedure specified in the Decision and Order. FOTILE's representations concerning the energy and water consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and any such representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy and water consumption of these products. (42 U.S.C. 6293(c))

Consistent with 10 CFR 430.27(j), not later than July 16, 2021, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for

waiver. Manufacturers not currently distributing such products/equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products/that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27. 10 CFR 430.27(j).

Case #2020-020

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include dishwashers the focus of this document. (42 U.S.C. 6292(a)(6))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered

products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is set forth at 10 CFR part 430, subpart B, appendix C1, “Uniform Test Method for Measuring the Energy Consumption of Dishwashers” (“Appendix C1”).

Any interested person may submit a petition for waiver from DOE’s test procedure requirements. 10 CFR 430.27(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(3).

II. FOTILE’s Petition for Waiver: Assertions and Determinations

On October 15, 2020, DOE received from FOTILE a petition for waiver and a petition for interim waiver from the DOE test procedure applicable to dishwashers set forth in Appendix C1. In its petition for waiver, FOTILE stated that the subject dishwasher models, which FOTILE described as “in-sink” compact dishwashers, do not have a main detergent compartment and have different installation instructions than under-counter or under-sink dishwashers. FOTILE requested that DOE waive sections of the dishwasher test procedure pertaining to installation

requirements and placement of the detergent. FOTILE suggested an alternate test procedure to install the dishwasher basic models from the top of a rectangular enclosure (as opposed to the front) and to specify placement of the detergent directly into the dishwasher chamber.

DOE posted the petition on the DOE website, absent any information for which petitioner requested treatment as confidential business information, at: <https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0035-0001>. On February 8, 2021, DOE published a notification that announced its receipt of the petition for waiver and granted FOTILE an interim waiver. 86 FR 8548 (“Notification of Petition for Waiver”). In the Notification of Petition for Waiver, DOE reviewed FOTILE’s application for an interim waiver and the alternate test procedure requested by FOTILE. DOE also reviewed manufacturer information available online, including the operation manual³ for the specified basic models. Based on the assertions in the petition and DOE’s review, DOE initially determined that the installation and detergent placement characteristics of the subject basic models prevent testing of the basic models according to the prescribed test procedure. 86 FR 8548, 8551. Also based on this review, DOE initially determined that the suggested alternate test procedure appeared to allow for the accurate measurement of the energy and water consumption of the specified basic models, while alleviating the testing problems associated with FOTILE’s implementation of dishwasher testing for these basic models. *Id.* Consequently, DOE determined that FOTILE’s petition for waiver likely would be granted. *Id.* Furthermore, DOE determined that it was desirable for public policy reasons to grant FOTILE immediate relief pending a determination of the petition for waiver. *Id.*

In the Notification of Petition for Waiver, DOE noted that FOTILE’s alternate test procedure specified a test enclosure that differs from the installation instructions provided in the operation manual. 86 FR 8548, 8549. Specifically, the alternate test procedure retained a requirement specified in Section 2.1 of Appendix C1 that the enclosure be brought into the closest contact with the appliance as allowed by the configuration of the dishwasher. In the case of FOTILE’s basic model, this would include close contact

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

³ The operation manual is available in the docket at <https://www.regulations.gov/document/EERE-2020-BT-WAV-0035-0002>.

between the bottom of the enclosure and the underside of the in-sink dishwasher. The height of the product is 21⁵/₁₆ inches (541 millimeters (“mm”). Bringing the bottom of the enclosure into the closest possible contact with the dishwasher (*i.e.*, creating an enclosure height of around 21⁵/₁₆ inches) would conflict with the installation instructions in the operation manual, which specify a minimum enclosure height of 35⁷/₁₆ inches (900 mm). DOE stated that this difference in installation may potentially result in differing heat losses from the dishwasher during testing as compared to installation in the field that could impact energy consumption during the cycle. *Id.* DOE requested comment on any such potential impacts on energy consumption as a result of the test enclosure specifications in the alternate test procedure, and whether installation should be required in accordance with the operation manual to provide results that are more representative of average use. *Id.* DOE also solicited comments from interested parties on all other aspects of the petition and the specified alternate test procedure. *Id.* DOE received no comments in response to the Notification of Petition for Waiver.

For the reasons explained here and in the Notification of Petition for Waiver, absent a waiver, the basic models identified by FOTILE in its petition cannot be tested and rated for energy and water consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by FOTILE and concludes that, with the modification discussed below, it will allow for the accurate measurement of the energy use of the product, while alleviating the testing problems associated with FOTILE’s implementation of DOE’s applicable dishwashers test procedure for the specified basic models. The alternate test procedure required under this Decision and Order modifies that specified in the Interim Waiver Order. In the alternate test procedure required under this Decision and Order, the height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer’s operation manual. While DOE did not receive any comments on this topic in response to the Notification of Petition for Waiver, installing compact in-sink dishwashers according to manufacturer’s instructions is representative, particularly since the manufacturer’s instructions explicitly provide a minimum height for the cabinetry in which the dishwasher is

installed. Additionally, the alternate test procedure requirements in the Interim Waiver Order may result in varying placement of the enclosure bottom, given that the drain pipe at the bottom of the unit could be configured differently in different installations, resulting in different enclosure heights corresponding to the closest contact that the configuration of the dishwasher would allow. This could introduce variability in the measured energy consumption. The specification to install the subject basic models consistent with the installation instructions provided in the operation manual will ensure reproducibility of test results and further ensure the test procedure provides results that are representative of the average use cycle.

As provided in 10 CFR 430.27(i), to the extent that FOTILE has already certified the subject basic models using the procedure permitted in DOE’s grant of the interim test procedure waiver, FOTILE is not required to re-test and re-rate those basic models so long as: It used that alternative procedure to certify the compliance of the basic model after DOE granted the company’s interim waiver request; changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient; and FOTILE does not modify the certified rating.

For subsequent certification of the subject basic models, FOTILE must test and rate the specified dishwasher basic models according to the alternate test procedure specified in this Decision and Order.

This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. FOTILE may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 430.27(g). FOTILE may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE’s determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models’ true energy consumption characteristics. 10 CFR 430.27(k)(1).

Likewise, FOTILE may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

As set forth above, the test procedure specified in this Decision and Order is not the same as the test procedure offered by FOTILE. If FOTILE believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, FOTILE may submit a request for modification under 10 CFR 430.27(k)(2) that addresses the concerns that DOE has specified with that procedure. FOTILE may also submit another less burdensome alternative test procedure not expressly considered in this notification under the same provision.

III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission staff concerning the FOTILE petition for waiver.

IV. Order

After careful consideration of all the material that was submitted by FOTILE and the various public-facing materials (*e.g.*, marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, in this matter, it is *ordered* that:

(1) For certifications required on and after the date of publication of this Order in the **Federal Register**, FOTILE must test and rate the following dishwasher basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model
FOTILE	SD2F–P1X
FOTILE	SD2F–P1XL

(2) The alternate test procedure for the FOTILE basic models listed in paragraph (1) of this Order is the test procedure for dishwashers prescribed by DOE at 10 CFR part 430, subpart B, appendix C1, with the modifications provided below. All other requirements of Appendix C1 and DOE’s other relevant regulations remain applicable.

In section 2.1, Installation, add at the end of the section:

A compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal

0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a front, a bottom, a back, and two sides. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. The height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. The dishwasher must be installed from the top and mounted to the edges of the enclosure.

In section 2.10, Detergent, add at the end of the section:

For compact in-sink dishwashers with a combination sink that have neither prewash program nor a main detergent compartment, determine the amount of main wash detergent (in grams) to be added directly into the washing chamber according to section 2.10.2 of this appendix.

(3) *Representations*. FOTILE may not make representations about the energy and water use of a basic model listed in paragraph (1) of this Order for compliance or marketing, unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) DOE issues this waiver on the condition that the statements, representations, test data, and information provided by FOTILE are valid. If FOTILE makes any modifications to the controls or configurations of these basic models, such modifications will render the waiver invalid with respect to that basic model, and FOTILE will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, FOTILE may request that DOE rescind or modify the waiver if FOTILE discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) FOTILE remains obligated to fulfill any applicable requirements set forth at 10 CFR part 429.

Signing Authority

This document of the Department of Energy was signed on May 11, 2021, by Kelly Speakes-Backman, Principal

Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 12, 2021.

Treena V. Garrett,

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

[FR Doc. 2021-10292 Filed 5-14-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2398-010; ER10-2399-010; ER10-2406-011; ER10-2409-010; ER10-2410-010; ER10-2411-011; ER10-2412-011; ER10-2414-013; ER11-2935-012; ER13-1816-013; ER14-1933-010; ER16-1724-007; ER17-1315-008; ER17-2087-006; ER18-1189-005; ER19-1281-002; ER19-1282-003.

Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Headwaters Wind Farm LLC, High Trail Wind Farm, LLC, Hog Creek Wind Project, LLC, Lexington Chenoa Wind Farm LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm V LLC, Meadow Lake Wind Farm VI LLC, Old Trail Wind Farm, LLC, Paulding Wind Farm II LLC, Paulding Wind Farm III LLC, Paulding Wind Farm IV LLC, Sustaining Power Solutions LLC.

Description: Notice of Non-Material Change in Status of Blackstone Wind Farm, LLC, et al.

Filed Date: 5/10/21.
Accession Number: 20210510-5222.
Comments Due: 5 p.m. ET 6/1/21.
Docket Numbers: ER10-2718-037; ER10-2719-038.

Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.

Description: Notice of Non-Material Change in Status of Cogen Technologies Linden Venture, L.P., et al.

Filed Date: 5/10/21.
Accession Number: 20210510-5216.
Comments Due: 5 p.m. ET 6/1/21.
Docket Numbers: ER11-4267-013; ER16-2169-005; ER16-2364-005; ER17-692-004.

Applicants: Algonquin Energy Services Inc., Algonquin SKIC 20 Solar, LLC, Algonquin SKIC 10 Solar, LLC, Algonquin Power Sanger LLC.

Description: Notice of Non-Material Change in Status of Algonquin Energy Services Inc., et al.

Filed Date: 5/7/21.
Accession Number: 20210507-5237.
Comments Due: 5 p.m. ET 5/28/21.
Docket Numbers: ER20-1708-002.

Applicants: California State University Channel Islands Site Authority.

Description: Compliance filing: Approved Offer of Settlement For RMR (ER20-1708) to be effective 5/1/2020.

Filed Date: 5/11/21.
Accession Number: 20210511-5043.
Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1373-001; ER21-1376-001; ER21-1369-000; ER21-1371-000; ER21-1368-000.

Applicants: ES 1A Group 2 Opco, LLC, ES 1A Group 3 Opco, LLC, Edwards Sanborn Storage I, LLC, Edwards Sanborn Storage II, LLC, Valley Center ESS, LLC.

Description: Supplement to the March 12, 2021 ES 1A Group 2 Opco, LLC, et al. tariff filings.

Filed Date: 5/10/21.
Accession Number: 20210510-5212.
Comments Due: 5 p.m. ET 5/24/21.

Docket Numbers: ER21-1653-000.
Applicants: Deer Creek Solar I LLC.

Description: Supplement to the April 9, 2021 Deer Creek Solar I LLC tariff filing.

Filed Date: 5/10/21.
Accession Number: 20210510-5215.
Comments Due: 5 p.m. ET 5/20/21.

Docket Numbers: ER21-1877-000.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: 2021-05-11_SA 3657 METC-Freshwater Solar E&P (J1379) to be effective 4/20/2021.

Filed Date: 5/11/21.
Accession Number: 20210511-5033.
Comments Due: 5 p.m. ET 6/1/21.
Docket Numbers: ER21-1878-000.

Applicants: Sundance Wind Project Holdings LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 7/11/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5051.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1879-000.

Applicants: Farmington Solar, LLC.

Description: Baseline eTariff Filing: Farmington Solar, LLC Application for MBR Authority to be effective 5/12/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5054.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1880-000.

Applicants: Niyol Wind, LLC.

Description: Baseline eTariff Filing: Niyol Wind, LLC Application for MBR Authority to be effective 7/11/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5059.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1881-000.

Applicants: Grand Tower Energy Center, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Reactive Tariff to be effective 5/12/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5072.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1882-000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC—Southern Power—NCEMC Dynamic Power Agreement RS-570 to be effective 7/11/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5078.

Comments Due: 5 p.m. ET 6/1/21.

Docket Numbers: ER21-1883-000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: True-Up of Section III.13.7 to Reflect Only Commission-Accepted Language to be effective 4/1/2021.

Filed Date: 5/11/21.

Accession Number: 20210511-5102.

Comments Due: 5 p.m. ET 6/1/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 11, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-10321 Filed 5-14-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP12-609-000.

Applicants: Texas Gas Transmission, LLC.

Description: Report Filing: 2020 Operational Purchases and Sales Reports.

Filed Date: 4/30/21.

Accession Number: 20210430-5066.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: RP13-212-000.

Applicants: Boardwalk Storage Company, LLC.

Description: Report Filing: 2020 Operational Purchases and Sales Reports.

Filed Date: 4/30/21.

Accession Number: 20210430-5067.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: RP21-806-000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Operational Transactions Report of Cameron Interstate Pipeline, LLC under RP21-806.

Filed Date: 4/30/21.

Accession Number: 20210430-5608.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: RP21-817-000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement—Macquarie Energy LLC to be effective 5/8/2021.

Filed Date: 5/7/21.

Accession Number: 20210507-5002.

Comments Due: 5 p.m. ET 5/19/21.

Docket Numbers: RP21-817-001.

Applicants: Natural Gas Pipeline Company of America.

Description: Tariff Amendment: Amendment to a Negotiated Rate

Filing—Macquarie Energy LLC to be effective 5/8/2021.

Filed Date: 5/7/21.

Accession Number: 20210507-5190.

Comments Due: 5 p.m. ET 5/19/21.

Docket Numbers: RP21-818-000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Update to Remove Neg Rate PAL Agreement—Exelon Generation Co to be effective 6/10/2021.

Filed Date: 5/7/21.

Accession Number: 20210507-5032.

Comments Due: 5 p.m. ET 5/19/21.

Docket Numbers: RP21-819-000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Update to Remove Negotiated Rate PAL Agreements—February 2021 to be effective 6/10/2021.

Filed Date: 5/7/21.

Accession Number: 20210507-5040.

Comments Due: 5 p.m. ET 5/19/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 11, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-10320 Filed 5-14-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2955-011]

City of Watervliet, New York; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application*: Subsequent Minor License.

b. *Project No.*: P-2955-011.

c. *Date Filed*: February 28, 2020.

d. *Applicant*: City of Watervliet, New York.

e. *Name of Project*: Normanskill Hydroelectric Project.

f. *Location*: The project is located on the Normans Kill in Guilderland, Albany County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Michele E. Stottler, Gomez and Sullivan Engineers, DPC, 399 Albany Shaker Road, Suite 203, Loudonville, NY 12211; (518) 407-0050; email—mstottler@gomezandsullivan.com or Joseph LaCivita, General Manager, The City of Watervliet, 2 Fifteenth Street, Watervliet, NY 12189; (518) 270-3800; email—jlacivita@watervliet.com.

i. *FERC Contact*: Woohee Choi at (202) 502-6336; or woohee.choi@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission’s eFiling system at <https://ferconline.ferc.gov/FERCONline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCONlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first

page of any filing should include docket number P-2955-011.

The Commission’s Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500-1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Normanskill Hydroelectric Project. Commission staff intends to conduct its NEPA review in accordance with CEQ’s new regulations.

1. *The Normanskill Project consists of*: (1) A 380-foot-long reinforced concrete Ambursen-type dam with a 306-foot-long overflow section having a crest elevation of 259 feet National Geodetic Vertical Datum of 1929 (NGVD29) surmounted by 3-foot-high flashboards; (2) a 380-acre reservoir with a gross volume of 3,600 acre-feet at the normal maximum pool elevation of 262 feet NGVD29; (3) an intake structure and sluiceway; (4) a 700-foot-long, 6-foot-diameter, concrete-encased steel, buried penstock; (5) a reinforced concrete underground powerhouse containing a single 1,250-kilowatt tube-type generating unit; (6) a 600-foot-long, 2.4-kilovolt (kV) transmission line; (7) a 2.4/13.2-kV transformer bank; and (8) appurtenant facilities.

The Normanskill Project is operated in a run-of-river mode with an average annual generation of 2,863 megawatt-hours between 2010 and 2019.

m. A copy of the application can be viewed on the Commission’s website at <http://www.ferc.gov> using the

“eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title “COMMENTS,” “REPLY COMMENTS,” “RECOMMENDATIONS,” “TERMS AND CONDITIONS,” or “PRESCRIPTIONS;” (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *A license applicant must file no later than 60 days following the date of issuance of this notice*: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule*: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	July 2021.
Deadline for Filing Reply Comments	August 2021.

Dated: May 11, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-10329 Filed 5-14-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511-024]

Lower Saranac Hydro, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Subsequent Minor License.
- b. *Project No.:* P-3511-024.
- c. *Date filed:* May 29, 2020.
- d. *Applicant:* Lower Saranac Hydro, LLC.
- e. *Name of Project:* Groveville Hydroelectric Project.
- f. *Location:* On Fishkill Creek, in the City of Beacon, Dutchess County, New York. The project does not occupy any federal land.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Tim Carlsen, CEO, Hydroland, Inc.,¹ 403 Madison Ave. #240, Bainbridge Island, WA 98110; Phone at (844) 493-7612 or email at tim@hydrolandcorp.com.
- i. *FERC Contact:* Jeremy Feinberg at (202) 502-6893 or jeremy.feinberg@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCONline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For

assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-3511-024.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500-1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Groveville Project. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The Groveville Hydroelectric Project consists of: (1) A 167-foot-long, 37-foot-high concrete gravity dam, with a 140-foot-long spillway having a crest elevation of 172.4 feet National Geodetic Vertical Datum of 1929 (NGVD29) and topped with 3-foot-high wooden flashboards; (2) an impoundment with a gross storage capacity of approximately 43 acre-feet and a surface area of 5 acres at a normal pool elevation of 175.4 feet NGVD29; (3) an intake structure with two gates and a 27-foot-high, 34-foot-wide trash rack; (4) a 9-foot-diameter, approximately 140-foot-long riveted steel underground penstock; (5) a powerhouse containing three fixed-output turbine-generator units with a

total rated capacity of 927 kilowatts; (6) a 4-foot-high submerged stilling basin weir approximately 60 feet downstream of the dam spillway; (7) a 20-foot-wide, 90-foot-long tailrace; (8) a 20-foot-long underground generator lead connecting to a step-up transformer that connects to a 13.2-kilovolt, 40-foot-long underground transmission line that then connects to a 15-foot-long aerial transmission line before connecting to the regional grid; and (9) appurtenant facilities.

Lower Saranac Hydro proposes to continue operating the project in a run-of-river mode, with no changes to the existing operation or facilities.

m. A copy of the application can be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including

¹ In a February 9, 2021 filing, the Commission was notified that Enel Green Power North America, Inc. transferred all its ownership interests for Lower Saranac Hydro, LLC to Hydroland, Inc.

documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	July 2021.
Deadline for Filing Reply Comments.	August 2021.

Dated: May 11, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-10327 Filed 5-14-21; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10023-79-OAR]

Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: Under the Cross-State Air Pollution Rule (CSAPR) trading program regulations, EPA allocates emission allowances to existing electricity generating units as provided in a notice of data availability (NODA). In the Revised CSAPR Update promulgated earlier this year, EPA finalized default allocations of CSAPR NO_x Ozone Season Group 3 allowances to existing units in Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia from the new state emissions budgets for the control periods in 2021 and subsequent years. In the same rule, EPA also finalized a formula for determining supplemental amounts of allowances to be issued for the 12 states for the 2021 control period and a methodology for allocating each state's supplemental allowances among the state's existing units. Through this NODA, EPA is providing notice of the availability of data on the allowance allocations to

existing units from both the state emissions budgets and the supplemental allowances, as well as the data upon which the allocations are based.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Michael Cohen at (202) 343-9497 or cohen.michael@epa.gov.

SUPPLEMENTARY INFORMATION: In the Revised CSAPR Update, EPA established new emissions budgets for ozone season emissions of nitrogen oxides (NO_x) in 2021 and subsequent years for 12 eastern states and promulgated federal implementation plan (FIP) provisions requiring affected units in those states to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program.¹ Beginning with the 2022 control period, each covered state generally has the option to determine how the CSAPR NO_x Ozone Season Group 3 allowances in its state emissions budget should be allocated among the state's units through a state implementation plan (SIP) revision.² However, for the 2021 control period, and by default for subsequent control periods for which a state has not provided EPA with the state's own allocations pursuant to an approved SIP revision, the unit-level allocations are determined by EPA. For units that commenced commercial operations before January 1, 2019, termed "existing" units for purposes of this trading program, EPA determined default allocations of CSAPR NO_x Ozone Season Group 3 allowances from the state emissions budgets for all control periods in the Revised CSAPR Update rulemaking. For units commencing commercial operation on or after January 1, 2019, termed "new" units for purposes of this trading program, EPA will determine the default allocations annually after each control period by applying a methodology in the regulations to data for that control period.³

To ensure that the enhanced control stringency of the Revised CSAPR Update's new state emissions budgets will apply only after the rule's effective date, for the control period in 2021 the rule provides for EPA to issue supplemental allowances for the covered states in amounts determined under a formula that accounts for the portion of the 2021 ozone season occurring before the rule's effective

date.⁴ Subsequent to the rulemaking, EPA has computed the amounts of supplemental allowances for each state according to the formula and has also determined the allocations of each state's supplemental allowances among the state's existing units. The rule does not provide for allocations of supplemental allowances to new units.

Through this NODA, EPA is providing notice of the availability of data on the unit-level allocations of CSAPR NO_x Ozone Season Group 3 allowances to existing units from both the state emissions budgets and each state's supplemental allowances. The allocations are shown in an Excel spreadsheet entitled "Updated Unit-Level Allocations and Underlying Data for the Revised CSAPR Update for the 2008 Ozone NAAQS" that has been posted on EPA's website at <https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update>. The spreadsheet contains the default unit-level allocations of allowances from the state emissions budgets for each control period starting with 2021, the unit-level allocations of supplemental allowances for the 2021 control period, and the data used to compute the allocations. The spreadsheet is an update of an earlier version that was included in the docket for the final Revised CSAPR Update and that contained the same default allocations of allowances from the state emissions budgets but did not contain the allocations of supplemental allowances. All allocations have been determined according to the allocation methodology finalized in the Revised CSAPR Update rulemaking.⁵ EPA is not requesting comment on the allocations, the underlying data, or the allocation methodology.

In accordance with the deadlines set forth in the regulations, EPA will generally record allocations of CSAPR NO_x Ozone Season Group 3 allowances to existing units for the 2021 control period by July 29, 2021.⁶ EPA will also generally record allocations to existing units for the 2022 control period by that same date except in instances where a state has provided EPA with timely notice of the state's intent to submit a SIP revision with state-determined allowance allocations replacing EPA's default allocations for the 2022 control period.⁷ However, in the case of any source that has not yet fully complied with the Revised CSAPR Update's

⁴ See 40 CFR 97.1010(d).

¹ See Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).

² See 40 CFR 52.38(b)(10) through (12) as amended in the Revised CSAPR Update.

³ See 40 CFR 97.1011(b) and 97.1012.

⁵ See Allowance Allocation Under the Revised CSAPR Update Final Rule TSD, available at <https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update>; see also 86 FR 23128-34.

⁶ See 40 CFR 97.1021(a).

⁷ See 40 CFR 97.1021(b).

requirements concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods after 2020, recordation of CSAPR NO_x Ozone Season Group 3 allowances will be deferred until the source has fully complied with the recall requirements.⁸

EPA notes that an allocation or lack of allocation of emission allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit.⁹ EPA also notes that allocations are subject to potential termination or correction under the regulations.¹⁰

Authority: 40 CFR 97.1011(a)(1).

Reid Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2021–10304 Filed 5–14–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10023–28–OAR]

Announcing Upcoming Meeting of Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA announces an upcoming meeting of the Mobile Sources Technical Review Subcommittee (MSTRS), which is a subcommittee under the Clean Air Act Advisory Committee (CAAAC). This is a virtual meeting and open to the public. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee website. To subscribe to the MSTRS listserv, send an email to MSTRS@epa.gov.

DATES: EPA will hold a virtual public meeting on Tuesday, June 15, 2021 from 9:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). Please monitor the website <https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac> for any changes to meeting logistics. The final meeting agenda will be posted on the website.

⁸ See 40 CFR 97.1021(m); see also 40 CFR 97.811(d).

⁹ See 40 CFR 97.1011(a)(1).

¹⁰ See 40 CFR 97.1011(a)(2) and (c).

ADDRESSES: For information on the public meeting or to register to attend, please contact MSTRS@epa.gov.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to attend the meeting or provide comments should express this intent by emailing MSTRS@epa.gov no later than Tuesday, June 1, 2021. Further information concerning this public meeting and general information concerning the MSTRS can be found at: <https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac>. Other MSTRS inquiries can be directed to Julia Burch, the Designated Federal Officer for MSTRS, Office of Transportation and Air Quality, at 202–564–0961 or burch.julia@epa.gov.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from its workgroups as well as updates and announcements on Office of Transportation and Air Quality activities of general interest to attendees.

Participation in virtual public meetings. Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

The virtual public meeting will provide interested parties the opportunity to participate in this Federal Advisory Committee meeting.

EPA is asking all meeting attendees, even those who do not intend to speak, to register for the meeting by sending an email to the address listed in the **FOR FURTHER INFORMATION CONTACT** section above, by Tuesday, June 1, 2021. This will help EPA ensure that sufficient participation capacity will be available.

Please note that any updates made to any aspect of the meeting logistics, including potential additional sessions, will be posted online at <https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac>. While EPA expects the meeting to go forward as set forth above, please monitor the website for any updates.

For individuals with disabilities: For information on access or services for individuals with disabilities, please email MSTRS@epa.gov. To request accommodate of a disability, please email MSTRS@epa.gov, preferably at least 10 business days prior to the

meeting, to give EPA as much time as possible to process your request.

Julia Burch,

Designated Federal Officer, Mobile Source Technical Review Subcommittee, Office of Transportation and Air Quality.

[FR Doc. 2021–10301 Filed 5–14–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10023–68–OAR]

Administration of Cross-State Air Pollution Rule Trading Program Assurance Provisions for 2020 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on the administration of the assurance provisions of the Cross-State Air Pollution Rule (CSAPR) trading programs for the control periods in 2020. Total emissions of nitrogen oxides (NO_x) reported by Mississippi and Missouri units participating in the CSAPR NO_x Ozone Season Group 2 Trading Program during the 2020 control period exceeded the respective states' assurance levels under the program. Data demonstrating the exceedances and EPA's preliminary calculations of the amounts of additional allowances that the owners and operators of certain Mississippi and Missouri units must surrender have been posted in a spreadsheet on EPA's website. EPA will consider timely objections to the data and calculations before making final determinations of the amounts of additional allowances that must be surrendered.

DATES: Objections to the information referenced in this notice must be received on or before June 16, 2021.

ADDRESSES: Submit your objections via email to CSAPR@epa.gov. Include “2020 CSAPR Assurance Provisions” in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Garrett Powers at (202) 564–2300 or powers.jamesg@epa.gov.

SUPPLEMENTARY INFORMATION: The regulations for each CSAPR trading program contain “assurance provisions” designed to ensure that the emissions reductions required from each state

covered by the program occur within the state. If the total emissions from a given state's affected units exceed the state's assurance level under the program, then two allowances must be surrendered for each ton of emissions exceeding the assurance level (in addition to the ordinary obligation to surrender one allowance for each ton of emissions). In the quarterly emissions reports covering the 2020 control period, Mississippi and Missouri units participating in the CSAPR NO_x Ozone Season Group 2 Trading Program reported emissions that exceed the respective states' assurance levels under the program. Mississippi units exceeded that state's assurance level by 260 tons, resulting in a requirement for the surrender of 520 additional allowances, and Missouri units exceeded that state's assurance level by 2,448 tons, resulting in a requirement for the surrender of 4,896 additional allowances.

When a state's assurance level is exceeded, responsibility for surrendering the required additional allowances is apportioned among groups of units in the state represented by "common designated representatives" based on the extent to which each such group's emissions exceeded the group's share of the state's assurance level. For the CSAPR NO_x Ozone Season Group 2 Trading Program, the procedures are set forth at 40 CFR 97.802 (definitions of "common designated representative," "common designated representative's assurance level," and "common designated representative's share"), 97.806(c)(2), and 97.825. Applying the procedures in the regulations for the 2020 control period, EPA has completed preliminary calculations indicating that responsibility for surrendering 520 additional allowances in Mississippi should be apportioned between the groups of units operated by Entergy Corporation and Mississippi Power Company, while responsibility for surrendering 4,896 additional allowances in Missouri should be apportioned almost entirely to the group of units operated by Associated Electric Cooperative, Inc., with much smaller shares apportioned to the groups of units operated by the municipal utilities of Chillicothe and Higginsville.

In this document, EPA is providing notice of the data relied on to determine the amounts of the exceedances of the Mississippi and Missouri assurance levels discussed above, as required under 40 CFR 97.825(b)(1)(ii), and notice of the preliminary calculations of the amounts of additional allowances that the owners and operators of certain Mississippi and Missouri units must

surrender as a result of the exceedances, as required under 40 CFR 97.825(b)(2)(ii).¹ By October 1, 2021, EPA will provide notice of the final calculations of the amounts of additional allowances that must be surrendered, incorporating any adjustments made in response to objections received, as required under 40 CFR 97.825(b)(2)(iii)(B). Each set of owners and operators identified pursuant to the notice of the final calculations must hold the required additional allowances in an assurance account by November 1, 2021.

The data and preliminary calculations are set forth in an Excel spreadsheet entitled "2020_CSAPR_assurance_provision_calculations_prelim.xlsx" available at <http://www.epa.gov/csapr/csapr-assurance-provision-nodas>. The spreadsheet contains data for the 2020 control period showing, for each Mississippi and Missouri unit identified as affected under the CSAPR NO_x Ozone Season Group 2 Trading Program, the amount of NO_x emissions reported by the unit and the amount of CSAPR NO_x Ozone Season Group 2 allowances allocated to the unit, including any allowances allocated from a new unit set-aside. The spreadsheet also contains calculations for the 2020 control period showing the total NO_x emissions reported by all such units in each state and the amounts by which the total reported NO_x emissions exceeded the respective states' assurance levels under the program. Finally, the spreadsheet also includes calculations for the 2020 control period showing, for each common designated representative for a group of such units in each state, the common designated representative's share of the total reported NO_x emissions, the common designated representative's share of the state's assurance level, and the amount of additional CSAPR NO_x Ozone Season Group 2 allowances that the owners and operators of the units in the group must surrender.

Any objections should be strictly limited to whether EPA has identified the data and performed the calculations in the spreadsheet correctly in accordance with the regulations. Objections must include (1) precise identification of the specific data or calculations the commenter believes are inaccurate, (2) new proposed data or calculations upon which the commenter believes EPA should rely instead, and

¹ The regulations allow the notice under § 97.825(b)(2)(ii) to be published approximately two months after the notice under § 97.825(b)(1)(ii), but in this instance EPA already has all the information needed to prepare both notices and therefore is publishing them together.

(3) the reasons why EPA should rely on the commenter's proposed data or calculations and not the data and calculations referenced in this notice.

(Authority: 40 CFR 97.825(b))

Reid Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2021-10303 Filed 5-14-21; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

Information Request on U.S. and Foreign Content in Transformational Exports; Extension of Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: On April 23, 2021, the Export-Import Bank of the United States (EXIM) requested information on the U.S. and foreign content in certain transformational export areas and sought public comment within 21 days of the date the notice appeared in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Interested parties may also submit comments to Scott.Condren@exim.gov or by mail to 811 Vermont Avenue NW, Room 1261, Washington, DC 20571.

SUPPLEMENTARY INFORMATION: EXIM is extending the comment period on FR Doc. 2021-08418 an additional 14 days to May 28th, 2021. Comments can be made at www.regulations.gov by searching EIB-2021-0001.

Authority: To assist the Export-Import Bank of the United States (EXIM) in the implementation of its historic seven-year reauthorization and directive to establish a new "Program on China and Transformational Exports" ("directive"), EXIM seeks information on the level of U.S. and foreign content in U.S. exports in the identified transformational export areas.

Scott Condren,

Sr. Policy Analyst, Office of Policy Analysis and International Relations.

[FR Doc. 2021-10323 Filed 5-14-21; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1186; FRS 26814]

Information Collection Being Reviewed by the Federal Communications Commission**AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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.

DATES: Written PRA comments should be submitted on or before July 16, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–1186.

Title: Rural Call Completion, WC Docket No. 13–39.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 56 respondents; 56 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection is contained in sections 201, 202, 217, 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 202, 217, 218, 220(a), 251(a), 403.

Total Annual Burden: 56 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission has found that rural call completion is a continuing problem imposing needless economic and personal costs on local communities, and that continued Commission focus on the issue is warranted. The rural call completion contact information will be used to facilitate industry collaboration to address call completion issues.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10307 Filed 5–14–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0854 and 3060–0422; FRS 26815]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget**AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the

following information collection.

Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 16, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this

opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-0854.

Title: Section 64.2401, Truth-in-Billing Format, CC Docket No. 98-170 and CG Docket No. 04-208.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,165 respondents; 23,157 responses.

Estimated Time per Response: 2 to 230 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 258, 47 U.S.C. 258, Public Law 104-104, 110 Stat. 56. The Commission's implementing rules are codified at 47 CFR 64.2400.

Total Annual Burden: 1,872,245 hours.

Total Annual Cost: \$10,000,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 1999, the Commission released the Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, (1999 TIB Order); published at 64 FR 34488, June 25, 1999, which adopted

principles and guidelines designed to reduce telecommunications fraud, such as slamming and cramming, by making bills easier for consumers to read and understand, and thereby, making such fraud easier to detect and report. In 2000, Truth-in-Billing and Billing Format, CC Docket No. 98-170, Order on Reconsideration, (2000 Reconsideration Order); published at 65 FR 43251, July 13, 2000, the Commission, granted in part petitions for reconsideration of the requirements that bills highlight new service providers and prominently display inquiry contact numbers. On March 18, 2005, the Commission released Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208, (2005 Second Report and Order and Second Further Notice); published at 70 FR 29979 and 70 FR 30044, May 25, 2005, which determined, inter alia, that Commercial Mobile Radio Service providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. The 2005 Second Further Notice proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications service providers.

On April 27, 2012, the Commission released the Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11-116, CG Docket No. 09-158, CC Docket No. 98-170, FCC 12-42 (Cramming Report and Order and Further Notice of Proposed Rulemaking); published at 77 FR 30972, May 24, 2012, which determined that additional rules are needed to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as "cramming."

OMB Control Number: 3060-0422.

Title: Hearing Aid Compatibility; Access to Telecommunications Equipment and Services by Persons with Disabilities; Section 68.5 Waivers, CC Docket No. 87-124 and CG Docket No. 13-46.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit entities.

Number of Respondents and Responses: 331 respondents; 3,030 responses.

Estimated Time per Response: 0.25 hour (15 minutes) to 24 hours.

Frequency of Response: Annual and on-occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610.

Total Annual Burden: 7,242 hours.

Total Annual Cost: \$487,500.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This notice and request for comments pertains to the extension of the currently approved information collection requirements concerning hearing aid compatibility (HAC) for wireline handsets used with the legacy telephone network and with advanced communications services (ACS), such as Voice over internet Protocol (VoIP). The latter are known as ACS telephonic customer premises equipment (ACS telephonic CPE).

Beginning in the 1980s, the Commission adopted a series of regulations to implement statutory directives requiring wireline telephone handsets in the United States (for use with the legacy telephone network) to be hearing aid compatible. In 2010, the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 111-260, sec. 102, 710(b), 124 Stat. 2751, 2753 (CVAA) (codified at 47 U.S.C. 610(b)), amended by Public Law 111-265, 124 Stat. 2795 (technical corrections to the CVAA), amended section 710(b) of the Communications Act of 1934, to apply the HAC requirements to ACS telephonic CPE, including VoIP telephones. In accordance with this provision, the Commission adopted Access to Telecommunications Equipment and Services by Persons with Disabilities et al., Report and Order and Order on Reconsideration, FCC 17-135, released October 26, 2017, which amended the HAC rules to cover ACS telephonic CPE to the extent such devices are designed to be held to the ear and provide two-way voice communication via a built-in speaker.

The information collections contain third-party disclosure and labeling requirements. The information is used to inform consumers who purchase or use wireline telephone equipment whether the telephone is hearing aid compatible; to ensure that manufacturers comply with applicable regulations and technical criteria; to ensure that information about ACS telephonic CPE is available in a database administered by the Administrative Council for Terminal Attachments (ACTA) (an organization, previously created pursuant to FCC regulations, whose key function is to maintain a database of telephone equipment); and to facilitate the filing of complaints about the ACS telephonic CPE.

Wireline Handsets Used With the Legacy Telephone Network

- 47 CFR 68.224 requires that every non-hearing aid compatible wireline telephone used with the legacy wireline network that is offered for sale to the public contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible. If the handset is offered for sale without a surrounding package, then the telephone must be affixed with a written statement that the telephone is not hearing aid compatible. In addition, each handset must be accompanied by instructions in accordance with 47 CFR 62.218(b)(2).

- 47 CFR 68.300 requires that all wireline telephones used with the legacy wireline network that are manufactured in the United States (other than for export) or imported for use in the United States and that are hearing aid compatible have the letters "HAC" permanently affixed.

ACS Telephonic CPE

- 47 CFR 68.502(a) of the Commission's rules contains information collection requirements for ACS telephonic CPE that are similar to the HAC label and notice requirements in 47 CFR 68.224 and 68.300 (discussed above), *i.e.*, the "HAC" labeling requirement for hearing aid compatible equipment, and the package information for non-hearing aid compatible equipment, apply to ACS telephonic CPE.

- 47 CFR 68.501 of the Commission's rules requires responsible parties to obtain certifications of their equipment by using a third-party Telecommunications Certification Body (TCB) or a Supplier's Declaration of Conformity. (A responsible party is the party, such as the manufacturer, that is responsible for the compliance of ACS

telephonic CPE with the hearing aid compatibility rules and other applicable technical criteria. A Supplier's Declaration of Conformity is a procedure whereby a responsible party makes measurements or takes steps to ensure that CPE complies with technical standards, which results in a document by the same name.) Section 68.501 of the Commission's rules applies to ACS telephonic CPE the rule sections defining the roles of TCBs and the uses of Supplier's Declarations of Conformity for wireline handsets used with the legacy telephone network.

- 47 CFR 68.504 of the Commission's rules requires information about ACS telephonic CPE to be included in a database administered by ACTA. In addition, ACS telephonic CPE must be labeled as required by ACTA.

- 47 CFR 68.502(b)–(d) of the Commission's rules requires responsible parties to: Warrant that ACS telephonic CPE complies with applicable regulations and technical criteria; give the user instructions required by ACTA for ACS telephonic CPE that is hearing aid compatible; give the user a notice for ACS telephonic CPE that is not hearing aid compatible; and notify the purchaser or user of ACS telephonic CPE whose approval is revoked, that the purchaser or user must discontinue its use.

- 47 CFR 68.503 of the Commission's rules requires manufacturers of ACS telephonic CPE to designate an agent for service of process for complaints that may be filed at the FCC.

Applications for Waiver of HAC Requirements

- 47 CFR 68.5 requires that telephone manufacturers seeking a waiver of 47 CFR 68.4(a)(1) (requiring that certain telephones be hearing aid compatible) demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021-10308 Filed 5-14-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1257; FRS 26891]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees." The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 16, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6)

when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–1257.

Title: New Procedure for Non-Federal Public Safety Entities to License Federal Government Interoperability Channels.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local, or tribal government.

Number of Respondents and Responses: 45,947 respondents; 45,947 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Section 90.25 adopted in Order DA 18–282, requires any non-federal public safety entity seeking to license mobile and portable units on the Federal Interoperability Channels to obtain written concurrence from its Statewide Interoperability Coordinator (SWIC) or a state appointed official and include such written concurrence with its application for license. A non-federal public safety entity may communicate on designated Federal Interoperability Channels for joint federal/non-federal operations, provided it first obtains a license from

the Commission authorizing use of the channels. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 11,487 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

Applicants who include written concurrence from their SWIC or state appointed official with their application to license mobile and portable units on the Federal Interoperability Channels need not include any confidential information with their application.

Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, “Wireless Services Licensing Records.” The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, “Wireless Services Licensing Records,” and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring a non-federal public safety entity to obtain written consent from its SWIC or state appointed official before communicating with federal government agencies on the Federal Interoperability Channels is to ensure that the non-federal public safety entity operates in accordance with the rules and procedures governing use of the federal interoperability channels and does not cause inadvertent interference during emergencies. Commission staff will use the written concurrence from the SWIC or state appointed official to

determine if an applicant's proposed operation on the Federal Interoperability Channels conforms to the terms of an agreement signed by the SWIC or state appointed official with a federal user with a valid assignment from the National Telecommunications and Information Administration (NTIA) which has jurisdiction over the channels.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10309 Filed 5–14–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: May 19, 2021; 10 a.m.

PLACE: This meeting will be held by video-conference only.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. National Shipper Advisory Committee and Federal Advisory Committee Act Implementation.

2. Staff Briefing on Options to Update and Publish Commission Organizational Information and Delegations of Authority.

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2021–10451 Filed 5–13–21; 4:15 pm]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearances for information collection requirements in Regulations B, E, M, and Z, which are enforced by the Commission. These clearances expire on September 30, 2021.

DATES: Comments must be filed by July 16, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Regs BEMZ, PRA Comments, P084812” on your comment and file your comment online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds or Stephanie Rosenthal, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326-3224.

SUPPLEMENTARY INFORMATION: The four regulations covered by this notice are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (“ECOA”) (“Regulation B”) (OMB Control Number: 3084-0087);

(2) Regulations promulgated under the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (“EFTA”) (“Regulation E”) (OMB Control Number: 3084-0085);

(3) Regulations promulgated under the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (“CLA”) (“Regulation M”) (OMB Control Number: 3084-0086); and

(4) Regulations promulgated under the Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (“TILA”) (“Regulation Z”) (OMB Control Number: 3084-0088).

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Discussion: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Public Law 111-203, 124 Stat. 1376 (2010), almost all rulemaking authority for the ECOA, EFTA, CLA, and TILA transferred from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011 (“transfer date”). To implement this transferred authority, the CFPB published new regulations in 12 CFR part 1002 (Regulation B), 12 CFR part 1005 (Regulation E), 12 CFR part 1013

(Regulation M), and 12 CFR part 1026 (Regulation Z) for those entities under its rulemaking jurisdiction.¹ Although the Dodd-Frank Act transferred most rulemaking authority under ECOA, EFTA, CLA, and TILA to the CFPB, the Board retained rulemaking authority for certain motor vehicle dealers² under all of these statutes and also for certain interchange-related requirements under EFTA.³

As a result of the Dodd-Frank Act, the FTC and the CFPB generally share the authority to enforce Regulations B, E, M, and Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers.⁴ Because of this shared enforcement jurisdiction, the two agencies have divided the FTC’s previously-cleared PRA burden estimates between them,⁵ except that the FTC has assumed all of the burden estimates associated with motor vehicle

¹ 12 CFR pt. 1002 (Reg. B) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1005 (Reg. E) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1013 (Reg. M) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1026 (Reg. Z) (81 FR 25323, Apr. 28, 2016).

² Generally, these are dealers “predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” See Dodd-Frank Act, § 1029, 12 U.S.C. 5519(a), (c).

³ See Dodd-Frank Act, § 1075, 15 U.S.C. 1693 (these requirements are implemented through Board Regulation II, 12 CFR pt. 235, rather than EFTA’s implementing Regulation E).

⁴ The FTC’s enforcement authority includes state-chartered credit unions; other federal agencies also have various enforcement authority over credit unions. For example, for large credit unions (exceeding \$10 billion in assets), the CFPB has certain authority. The National Credit Union Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines credit unions for various purposes. There are approximately three state-chartered credit unions exceeding \$10 billion in assets, and the CFPB assumes PRA burden for those entities. As of the fourth quarter of 2020, there were approximately 2,126 state-chartered credit unions—1,914 which were federally insured, an estimated 112 or more which were privately insured, and an estimated 100 or more in Puerto Rico which were insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of the overlapping authority, the FTC’s figures include PRA burden for all state-chartered credit unions. However, in view of fluctuations due to COVID-19 and to avoid undercounting, we have retained the prior estimate of 2,300 state-chartered credit unions. As noted above, the CFPB’s figures as to state-chartered credit unions include burden for those entities exceeding \$10 billion in assets. See generally Dodd-Frank Act, §§ 1061, 1025, 1026. This attribution does not change actual enforcement authority. We also have retained the prior burden hours generally in the estimates below, in view of these considerations.

⁵ The CFPB also factors into its burden estimates respondents over which it has jurisdiction but the FTC does not.

dealers⁶ and state-chartered credit unions. The division of PRA burden hours not attributable to motor vehicle dealers and state-chartered credit unions is reflected in the CFPB’s PRA clearance requests to OMB, as well as in the FTC’s burden estimates below.

Pursuant to the Dodd-Frank Act, the FTC generally has sole authority to enforce Regulations B, E, M, and Z regarding certain motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, that, among other things, assign their contracts to unaffiliated third parties.⁷ Because the FTC has exclusive jurisdiction to enforce these rules for such motor vehicle dealers and retains its concurrent authority with the CFPB for other types of motor vehicle dealers, and in view of the different types of motor vehicle dealers, the FTC retains the entire PRA burden for motor vehicle dealers in the burden estimates below.

The regulations impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

All four of these regulations require covered entities to keep certain records, but FTC staff believes these records are kept in the normal course of business even absent the particular recordkeeping requirements.⁸ Covered entities, however, may incur some burden associated with ensuring that they do not prematurely dispose of relevant records (*i.e.*, during the time

⁶ See Dodd-Frank Act § 1029, 12 U.S.C. 5519(a), as limited by subsection (b) as to motor vehicle dealers. Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff’s PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

⁷ See Dodd-Frank Act § 1029, 12 U.S.C. 5519(a), (c).

⁸ PRA “burden” does not include “time, effort, and financial resources” expended in the normal course of business, regardless of any regulatory requirement. See 5 CFR 1320.3(b)(2).

span they must retain records under the applicable regulation).

The regulations also require covered entities to make disclosures to third parties. Related compliance involves set-up/monitoring and transaction-specific costs. “Set-up” burden, incurred only by covered new entrants, includes identifying the applicable required disclosures, determining how best to comply, and designing and developing compliance systems and procedures. “Monitoring” burden, incurred by all covered entities, includes their time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures to ensure continued compliance. “Transaction-related” burden refers to the time and cost associated with providing the various required disclosures in individual transactions, thus, generally, of much lesser magnitude than “setup” and “monitoring” burden. The FTC’s estimates of transaction time and volume are intended as averages. The population of affected motor vehicle dealers is one component of a much larger universe of such entities.

The required disclosures do not impose PRA burden on some covered entities because they make those disclosures in the normal course of business. For other covered entities that do not, their compliance burden will vary depending on the extent to which they have developed effective computer-based or electronic systems and procedures to communicate and document required disclosures.⁹

The respondents included in the following burden calculations consist of, among others, credit and lease advertisers, creditors, owners (such as purchasers and assignees) of credit obligations, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (“EFTs”) of government benefits, and lessors.¹⁰ The burden estimates

⁹For example, large companies may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, e.g., notice of changes in terms. Smaller companies may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; if so, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and thus may have a higher burden.

¹⁰The Commission generally does not have jurisdiction over banks, thrifts, and federal credit unions under the applicable regulations.

represent FTC staff’s best assessment, based on its knowledge and expertise relating to the financial services industry, of the average time to complete the aforementioned tasks associated with recordkeeping and disclosure. Staff considered the wide variations in covered entities’ (1) size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) EFT types used; (4) types and frequency of adverse actions taken; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

The cost estimates that follow relate solely to labor costs, and they include the time necessary to train employees how to comply with the regulations. Staff calculated labor costs by multiplying appropriate hourly wages by the burden hours described above. The hourly wages used were \$60 for managerial oversight, \$44 for skilled technical services, and \$18 for clerical work. These figures are averages drawn from Bureau of Labor Statistics data.¹¹ Further, these cost estimates assume the following labor category apportionments, except where otherwise indicated below: Recordkeeping—10% skilled technical, 90% clerical; disclosure—10% managerial, 90% skilled technical.

The applicable PRA requirements impose minimal capital or other non-labor costs. Affected entities generally already have the necessary equipment for other business purposes. Similarly, FTC staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the normal course of business.

The following discussion and tables present estimates under the PRA of recordkeeping and disclosure average time and labor costs, excluding that which FTC staff believes entities incur customarily in the normal course of business and information compiled and produced in response to FTC law enforcement investigations or prosecutions.¹²

¹¹These inputs are based broadly on mean hourly data found within the “Bureau of Labor Statistics, Economic News Release,” March 31, 2021, Table 1, “National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2020.” <http://www.bls.gov/news.release/ocwage.t01.htm>.

¹²See 5 CFR 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or “during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities”).

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B implements the ECOA, establishing disclosure requirements to assist customers in understanding their rights under the ECOA and recordkeeping requirements to assist agencies in enforcement. Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and others.

FTC staff estimates that Regulation B’s general recordkeeping requirements affect 530,762 credit firms subject to the Commission’s jurisdiction, at an average annual burden of 1.25 hours per firm for a total of 663,453 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each (of skilled technical time) for approximately 2.6 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 43,333 hours.¹³ Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,500 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,500 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, i.e., 150 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 600 hours.¹⁴ This yields a total annual recordkeeping burden of 708,886 hours.

Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action, such as denial of a credit application. It requires entities that extend mortgage credit with first liens to provide a copy of the appraisal report or other written valuation to applicants.¹⁵ Finally, Regulation B also requires that for accounts that spouses may use or for

¹³Regulation B contains model forms that creditors may use to gather and retain the required information.

¹⁴In contrast to banks, for example, entities under FTC jurisdiction are not subject to audits by the FTC for compliance with Regulation B; rather they may be subject to FTC investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

¹⁵While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is provided by the CFPB, and is thus not a “collection of information” for PRA purposes. Accordingly, it is not included in burden estimates below.

which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that: (1) Providing the information is optional; (2) the creditor

will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.¹⁶ Burden estimates relating to the disclosures required under Regulation B and labor

cost estimates are provided in the tables below.

Burden Totals

Recordkeeping: 708,886 hours; \$15,666,176, associated labor costs.

Disclosures: 1,088,912 hours; \$49,654,400, associated labor costs.

REGULATION B—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring ¹			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Credit history reporting	133,553	.25	33,388	60,098,850	.25	250,412	283,800
Adverse action notices	530,762	.75	398,072	92,883,350	.25	387,014	785,086
Appraisal reports/written valuations	4,650	1	4,650	1,725,150	.50	14,376	19,026
Self-test disclosures	1,500	.5	750	60,000	.25	250	1,000
Total							1,088,912

¹ The estimates assume that all applicable entities would be affected, with respect to appraisal reports and other written valuations.

REGULATION B—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$60/hr.)	Time (hours)	Cost (\$44/hr.)	Time (hours)	Cost (\$18/hr.)	
General recordkeeping	0	\$0	66,345	\$2,919,180	597,108	\$10,747,944	\$13,667,124
Other recordkeeping	0	0	43,333	1,906,652	0	0	1,906,652
Recordkeeping of self-test	0	0	1,500	66,000	0	0	66,000
Recordkeeping of corrective action	0	0	600	26,400	0	0	26,400
Total Recordkeeping							15,666,176
Disclosures:							
Credit history reporting	28,380	1,702,800	255,420	11,238,480	0	0	12,941,280
Adverse action notices	78,509	4,710,540	706,577	31,089,388	0	0	35,799,928
Appraisal reports	1,903	114,180	17,123	753,412	0	0	867,592
Self-test disclosure	100	6,000	900	39,600	0	0	45,600
Total Disclosures							49,654,400
Total Recordkeeping and Disclosures							65,320,576

2. Regulation E

The EFTA requires that covered entities provide consumers with accurate disclosure of the costs, terms, and rights relating to EFT and certain other services. Regulation E implements the EFTA, establishing disclosure and other requirements to aid consumers and recordkeeping requirements to assist agencies with enforcement. It applies to financial institutions,

retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, prepaid account entities, etc. Staff estimates that Regulation E's recordkeeping requirements affect 251,053 firms offering EFT and certain other services to consumers and that are subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total

of 251,053 hours. Burden estimates relating to the disclosures required under Regulation E and labor cost estimates are provided in the tables below.

Burden Totals

Recordkeeping: 251,053 hours; \$5,171,684, associated labor costs.

Disclosures: 7,184,903 hours; \$327,631,676, associated labor costs.

REGULATION E—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Initial terms	27,300	.5	13,650	273,000	.02	91	13,741
Change in terms	8,550	.5	4,275	11,286,000	.02	3,762	8,037

¹⁶ The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

REGULATION E—DISCLOSURES—BURDEN HOURS—Continued

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Periodic statements	27,300	.5	13,650	327,600,000	.02	109,200	122,850
Error resolution	27,300	.5	13,650	273,000	5	22,750	36,400
Transaction receipts	27,300	.5	13,650	1,375,000,000	.02	458,333	471,983
Preauthorized transfers	258,553	.5	129,277	6,463,825	.25	26,933	156,210
Service provider notices	20,000	.25	5,000	200,000	.25	833	5,833
ATM notices	125	.25	31	25,000,000	.25	104,167	104,198
Electronic check conversion	48,553	.5	24,277	728,295	.02	243	24,520
Overdraft services	15,000	.5	7,500	1,500,000	.02	500	8,000
Gift cards	15,000	.5	7,500	750,000,000	.02	250,000	257,500
Remittance transfers:							
Disclosures	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Error resolution	4,800	1.25	6,000	120,960,000	.9	1,814,400	1,820,400
Agent compliance	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Prepaid accounts and gov't benefits:							
Disclosures	550	¹ 40 × 10	220,000	2,750,000,000	.02	916,667	1,136,667
Disclosures—updates	138	1 × 10	² 1,380	N/A			1,380
Access to account information	550	³ 20 × 10	110,000	1,100,000	.01	183	110,183
Error resolution	300	4 × 4	4,800	275,000	2	9,167	13,967
Error resolution—followup ⁴		N/A		1,380	30	690	690
Submission of agreements	138	2 × 1	276	690	1	11	287
Updates to agreements ⁵		N/A		690	5	57	57
Total							7,184,903

¹ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
² Individual burden hours are listed first, followed by the number of programs.
³ Burden hours are on a per program basis; individual burden hours are listed first, followed by the number of programs.
⁴ This pertains to prepaid accounts.
⁵ This pertains to prepaid accounts' agreements.

REGULATION E—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$60/hr.)	Time (hours)	Cost (\$44/hr.)	Time (hours)	Cost (\$18/hr.)	
Recordkeeping	0	\$0	25,105	\$1,104,620	225,948	\$4,067,064	\$5,171,684
Disclosures:							
Initial terms	1,374	82,440	12,367	544,148	0	0	626,588
Change in terms	804	48,240	7,233	318,252	0	0	366,492
Periodic statements	12,285	737,100	110,565	4,864,860	0	0	5,601,960
Error resolution	3,640	218,400	32,760	1,441,440	0	0	1,659,840
Transaction receipts	47,198	2,831,880	424,785	18,690,540	0	0	21,522,420
Preauthorized transfers	15,621	937,260	140,589	6,185,916	0	0	7,123,176
Service provider notices	583	34,980	5,250	231,000	0	0	265,980
ATM notices	10,420	625,200	93,778	4,126,232	0	0	4,751,432
Electronic check conversion	2,452	147,120	22,068	970,992	0	0	1,118,112
Overdraft services	800	48,000	7,200	316,800	0	0	364,800
Gift cards	25,750	1,545,000	231,750	10,197,000	0	0	11,742,000
Remittance transfers:							
Disclosures	144,600	8,676,000	1,301,400	57,261,600	0	0	65,937,600
Error resolution	182,040	10,922,400	1,638,360	72,087,840	0	0	83,010,240
Agent compliance	144,600	8,676,000	1,301,400	57,261,600	0	0	65,937,600
Prepaid accounts and gov't. benefits:							
Disclosures	113,667	6,820,020	1,023,000	45,012,000	0	0	51,832,020
Disclosures—updates	138	8,288	1,242	54,648	0	0	62,928
Access to account information	11,018	661,080	99,165	4,363,260	0	0	5,024,340
Error resolution	1,397	83,820	12,570	553,080	0	0	636,900
Error resolution—followup	69	4,140	621	27,324	0	0	31,464
Submission of agreements	29	1,740	259	11,396	0	0	13,136
Updates to agreements	6	360	52	2,288	0	0	2,648
Total Disclosures							327,631,676
Total Recordkeeping and Disclosures							332,803,360

3. Regulation M

The CLA requires that covered entities provide consumers with accurate disclosure of the costs and terms of leases. Regulation M

implements the CLA, establishing disclosure requirements to help consumers comparison shop and understand the terms of leases and recordkeeping requirements. It applies to vehicle lessors (such as auto dealers,

independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease

advertisers, and others. Staff estimates that Regulation M's recordkeeping requirements affect approximately 30,203 firms within the FTC's jurisdiction leasing products to consumers at an average annual burden

of one hour per firm, for a total of 30,203 hours. Burden estimates relating to the disclosures required under Regulation M and labor cost estimates are provided in the tables below.

*Burden Totals*¹⁷

Recordkeeping: 30,203 hours; \$1,763,860, associated labor costs.

Disclosures: 71,750 hours; \$4,190,200, associated labor costs.

REGULATION M—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Motor Vehicle Leases ¹	26,690	1	26,690	4,000,000	.50	33,333	60,023
Other Leases ²	3,513	.50	1,757	60,000	.25	250	2,007
Advertising	14,615	.50	7,308	578,960	.25	2,412	9,720
Total							71,750

¹ This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). CLA and Regulation M now cover leases up to \$58,300 plus an annual adjustment.

² This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). CLA and Regulation M now cover leases up to \$58,300 plus an annual adjustment.

REGULATION M—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$60/hr.)	Time (hours)	Cost (\$44/hr.)	Time (hours)	Cost (\$18/hr.)	
Recordkeeping	27,183	\$1,630,980	3,020	\$132,880	0	\$0	\$1,763,860
Disclosures:							
Motor Vehicle Leases	54,021	3,241,260	6,002	264,088	0	0	3,505,348
Other Leases	1,806	108,360	201	8,844	0	0	117,204
Advertising	8,748	524,880	972	42,768	0	0	567,648
Total Disclosures							4,190,200
Total Recordkeeping and Disclosures							5,954,060

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decisionmaking by requiring creditors and others to provide accurate disclosures regarding the costs and terms of credit to consumers. Regulation Z implements the TILA, establishing disclosure requirements to assist consumers and recordkeeping requirements to assist agencies with enforcement. These requirements pertain to open-end and closed-end credit and apply to various types of entities, including mortgage companies;

finance companies; auto dealerships; private education loan companies; merchants who extend credit for goods or services; credit advertisers; acquirers of mortgages; and others. Additional requirements also exist in the mortgage area, including for high cost mortgages, higher-priced mortgage loans,¹⁸ ability to pay of mortgage consumers, mortgage servicing, loan originators, and certain integrated mortgage disclosures. FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 430,762 entities subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per

entity with .25 additional hours per entity for 3,650 entities (ability to pay), and 5 additional hours per entity for 4,500 entities (loan originators). This yields a total annual recordkeeping burden of 561,866 hours. Burden estimates relating to the disclosures required under Regulation Z and labor cost estimates are provided in the tables below.

Burden Totals

Recordkeeping: 561,866 hours; \$11,574,450, associated labor costs.

Disclosures: 7,854,575 hours; \$358,169,628, associated labor costs.

¹⁷ Recordkeeping and disclosure burden estimates for Regulation M are more substantial for motor vehicle leases than for other leases, including burden estimates based on market changes and regulatory definitions of coverage. Based on industry information, the estimates for recordkeeping and disclosure costs assume the

following: 90% managerial, and 10% skilled technical. As noted above, for purposes of PRA burden calculations for Regulations B, E, M, and Z, and given the different types of motor vehicle dealers, the FTC is including in its estimates burden for all of them.

¹⁸ While Regulation Z also requires the creditor to provide a short written disclosure regarding the appraisal process for higher-priced mortgage loans, the disclosure is provided by the CFPB. As a result, it is not a "collection of information" for PRA purposes (see 5 CFR 1320.3(c)(2)). It is thus excluded from the burden estimates below.

REGULATION Z—DISCLOSURES—BURDEN HOURS

Disclosures ¹	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Open-end credit:							
Initial terms	23,650	.75	17,738	10,500,600	.375	65,629	83,367
Initial terms—prepaid accounts	3	² 4 × 1	12	³ 3 × 78,667	.125	492	504
Rescission notices	750	.5	375	3,750	.25	16	391
Subsequent disclosures	4,650	.75	3,488	23,250,000	.188	72,850	76,338
Subsequent disclosures—prepaid accounts	3	⁴ 4 × 1	12	⁵ 3 × 78,667	.0625	246	258
Periodic statements	23,650	.75	17,738	788,325,450	.0938	1,232,415	1,250,153
Periodic statements—prepaid accounts	3	⁶ 40 × 1	120	⁷ 3 × 944,000	.03125	1,475	1,595
Error resolution	23,650	.75	17,738	2,104,850	6	210,485	228,223
Error resolution—prepaid accounts followup	3	⁸ 4 × 1	12	⁹ 3 × 1,180	15	885	897
Credit and charge card accounts	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Credit and charge card accounts—prepaid accounts	3	¹⁰ 4 × 1	12	¹¹ 3 × 12	240	144	156
Settlement of estate debts	23,650	.75	17,738	496,650	.375	3,104	20,842
Special credit card requirements	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Home equity lines of credit	750	.5	375	5,250	.25	22	397
Home equity lines of credit high-cost mortgages	250	2	500	1,500	2	50	550
College student credit card marketing—ed. institutions	1,350	.5	675	81,000	.25	338	1,013
College student credit card marketing—card issuer reports	150	.75	113	4,500	.75	56	169
Posting and reporting of credit card agreements	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Posting and reporting of prepaid account agreements	3	¹² .75 × 1	2	¹³ 3 × 5	2.5	1	3
Advertising	38,650	.75	28,988	115,950	.75	1,449	30,437
Advertising—prepaid accounts	3	¹⁴ 20 × 1	60	N/A	.....	.....	60
Advertising—prepaid accounts Updates	3	¹⁵ 0.2 × 5	3	N/A	.....	.....	3
Sale, transfer, or assignment of mortgages	500	.5	250	500,000	.25	2,083	2,333
Appraiser misconduct reporting	301,150	.75	225,863	6,023,000	.375	37,644	263,507
Mortgage servicing	1,500	.75	1,125	150,000	.5	1,250	2,375
Loan originators	2,250	2	4,500	22,500	5	1,875	6,375
Closed-end credit:							
Credit disclosures	280,762	.75	210,572	112,304,800	2.25	4,211,430	4,422,002
Rescission notices	3,650	.5	1,825	5,475,000	1	91,250	93,075
Redisclosures	101,150	.5	50,575	505,750	2.25	18,966	69,541
Integrated mortgage disclosures	3,650	10	36,500	10,950,000	3.5	638,750	675,250
Variable rate mortgages	3,650	1	3,650	365,000	1.75	10,646	14,296
High cost mortgages	1,750	1	1,750	43,750	2	1,458	3,208
Higher priced mortgages	1,750	1	1,750	14,000	2	467	2,217
Reverse mortgages	3,025	.5	1,513	15,125	1	252	1,765
Advertising	205,762	.5	102,881	2,057,620	1	34,294	137,175
Private education loans	75	.5	38	30,000	1.5	750	788
Sale, transfer, or assignment of mortgages	48,850	.5	24,425	2,442,500	.25	10,177	34,602
Ability to pay/qualified mortgage	3,650	.75	2,738	0	0	0	2,738
Appraiser misconduct reporting	301,150	.75	225,863	6,023,000	.375	37,644	263,507
Mortgage servicing	3,650	1.5	5,475	730,000	2.75	33,458	38,933
Loan originators	2,250	2	4,500	22,500	5	1,875	6,375
Total open-end credit .....	.....	.....	.....	.....	.....	.....	2,089,103
Total closed-end credit .....	.....	.....	.....	.....	.....	.....	5,765,472
Total credit .....	.....	.....	.....	.....	.....	.....	7,854,575

¹ Regulation Z requires disclosures for closed-end and open-end credit. TILA and Regulation Z now cover credit up to \$58,300 plus an annual adjustment (except that real estate credit and private education loans are covered regardless of amount).

² Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

³ This figure lists the number of entities followed by the number of responses or programs each.

⁴ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

⁵ This figure lists the number of entities followed by the number of responses or programs each.

⁶ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

⁷ This figure lists the number of entities followed by the number of responses or programs each.

⁸ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

⁹ This figure lists the number of entities followed by the number of responses or programs each.

¹⁰ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

¹¹ This figure lists the number of entities followed by the number of responses or programs each.

¹² Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

¹³ This figure lists the number of entities followed by the number of responses or programs each.

¹⁴ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

¹⁵ Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

REGULATION Z—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$60/hr.)	Time (hours)	Cost (\$44/hr.)	Time (hours)	Cost (\$18/hr.)	
Recordkeeping	0	\$0	56,187	\$2,472,228	505,679	\$9,102,222	\$11,574,450
Open-end credit Disclosures:							
Initial terms	8,337	500,220	75,030	3,301,220	0	0	3,301,540
Initial terms—prepaid accounts	50	3,000	454	19,776	0	0	22,976
Rescission notices	39	2,340	352	15,488	0	0	17,828
Subsequent disclosures	7,634	458,040	68,704	3,022,976	0	0	3,481,016
Subsequent disclosures—prepaid accounts	26	1,560	232	10,208	0	0	11,768
Periodic statements	125,015	7,500,900	1,125,138	49,506,072	0	0	57,006,972
Periodic statements—prepaid accounts	159	9,540	1436	63,184	0	0	72,724
Error resolution	22,822	1,369,320	205,401	9,037,644	0	0	10,406,964
Error resolution—prepaid accounts followup	90	5,400	807	35,508	0	0	40,908
Credit and charge card accounts	3,972	238,320	35,747	1,572,868	0	0	1,811,188
Credit and charge card accounts—prepaid accounts	16	960	140	6,160	0	0	7,120
Settlement of estate debts	2,084	125,040	18,758	825,352	0	0	950,392
Special credit card requirements	3,972	238,320	35,747	1,572,868	0	0	1,811,188
Home equity lines of credit	40	2,400	357	15,708	0	0	18,108
Home equity lines of credit—high cost mortgages	55	3,300	495	21,780	0	0	25,080
College student credit card marketing—ed institutions	101	6,060	912	40,128	0	0	46,188
College student credit card marketing—card issuer reports	17	1,020	152	6,688	0	0	7,708
Posting and reporting of credit card agreements	3,972	238,320	35,747	1,572,868	0	0	1,811,188
Posting and reporting of prepaid accounts	1	60	2	88	0	0	148
Advertising	3,044	182,640	27,393	1,205,292	0	0	1,388,932
Advertising—prepaid accounts	6	360	54	2,376	0	0	2,736
Advertising—prepaid accounts Updates	1	60	2	88	0	0	148
Sale, transfer, or assignment of mortgages	233	13,980	2,100	92,400	0	0	106,380
Appraiser misconduct reporting	26,351	1,581,060	237,156	10,434,864	0	0	12,015,924
Mortgage servicing	238	14,280	2,137	94,028	0	0	108,308
Loan originators	638	38,280	5,737	252,428	0	0	290,708
Total open-end credit							95,264,140
Closed-end credit Disclosures:							
Credit disclosures	442,200	26,532,000	3,979,802	175,111,288	0	0	201,643,208
Rescission notices	9,308	558,480	83,767	3,685,748	0	0	4,244,228
Redisclosures	6,954	417,240	62,587	2,753,828	0	0	3,171,068
Integrated mortgage disclosures	67,525	4,051,500	607,725	26,739,900	0	0	30,791,400
Variable rate mortgages	1,430	85,800	12,866	566,104	0	0	651,904
High cost mortgages	321	19,260	2,887	127,028	0	0	146,288
Higher priced mortgages	222	13,320	1,995	87,780	0	0	101,100
Reverse mortgages	177	10,620	1,588	69,872	0	0	80,492
Advertising	13,718	823,080	123,457	5,432,108	0	0	6,255,188
Private education loans	79	4,740	709	31,196	0	0	35,936
Sale, transfer, or assignment of mortgages	3,460	207,600	31,142	1,370,248	0	0	1,577,848
Ability to pay/qualified mortgage	274	16,440	2,464	108,416	0	0	124,856
Appraiser misconduct reporting	26,351	1,581,060	237,156	10,434,864	0	0	12,015,924
Mortgage servicing	3,893	233,580	35,040	1,541,760	0	0	1,775,340
Loan originators	638	38,280	5,737	252,428	0	0	290,708
Total closed-end credit							262,905,488
Total Disclosures							358,169,628
Total Recordkeeping and Disclosures							369,744,078

Request for Comment:

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are useful; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 16, 2021. Write “Regs BEMZ, PRA Comments, P084812” on your comment. Your comment, including

your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage

you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "Regs BEMZ, PRA Comments, P084812" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential," as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public

interest. Once your comment has been posted on <https://www.regulations.gov>, we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 16, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021-10285 Filed 5-14-21; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2021-0053]

The Systematic Review Report for Diagnosis and Treatment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS): Request for Comment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on the systematic review draft report for Diagnosis and Treatment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS). The draft report describes inclusion and exclusion criteria to identify relevant literature, outlines the approach for evaluating study quality, and summarizes the systematic review results. The report, once finalized, is intended to support the anticipated development of future clinical practice guidelines, which would guide physicians in managing and providing care for patients with ME/CFS. Currently there are no federal guidelines for management of ME/CFS. CDC has commissioned the Pacific Northwest Evidence-Based Practice Center at Oregon Health & Science

University to conduct a systematic review of the publicly available scientific literature and now seeks public comment to inform the final report. In particular, CDC seeks data and information, including reports and manuscripts that are pending publications or are not available through indexed bibliographic databases. Access to pertinent scientific information from research and evidence-based clinical practice may be used to inform the final report. The anticipated CDC guideline would assist clinicians by outlining management practices for patients with ME/CFS.

DATES: Written comments must be received on or before August 16, 2021. May 17, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2021-0053 by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Anindita Issa, MD, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24-12, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Do not submit comments by email. CDC does not accept comments by email.

FOR FURTHER INFORMATION CONTACT: For technical information on the systematic review report for ME/CFS, contact Anindita Issa, MD, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24-12, Atlanta, Georgia 30329. Telephone: 404-718-3959; email: cfs@cdc.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data related to the draft report, including perspectives on and experiences with diagnosis and management of ME/CFS illness. In addition, CDC invites comments specifically on topics for pharmacological or non-pharmacological treatments.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore,

do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted in preparation of the final systematic review report and may revise it as appropriate. Do not submit comments by email. CDC does not accept comments by email.

Background

CDC has commissioned the Pacific Northwest Evidence-Based Practice Center at Oregon Health and Science University to conduct a systematic review of the publicly available scientific literature for ME/CFS (systematic review). Once finalized, the systematic review report is intended to support the anticipated development of future agency clinical practice guidelines. The anticipated CDC guideline would assist physicians and other clinicians by outlining management practices for caring for patients with ME/CFS.

Public comment may inform the final systematic review report and may be used to inform development of a clinical guideline and related materials, which would help clinicians diagnose and treat patients with ME/CFS.

Dated: May 11, 2021.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021-10271 Filed 5-14-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10398 #71]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance¹ related to the "generic" clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are "usually voluntary, low-burden, and uncontroversial collections," do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938-1148 (CMS-10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: The necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 1, 2021.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938-1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection

document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS-10398 (#71)/OMB control number: 0938-1148, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may access CMS' website at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Reporting Requirements for State Planning Grants for Qualifying Community-Based Mobile Crisis Intervention Services During the COVID-19 Emergency; *Type of Information Collection Request:* New collection; *Use:* On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2). Under ARP section 9813, planning grantees must submit quarterly progress reports and a final progress report. The reports should include narrative updates on planning grant activities, as well as information on each recipient's approved work plan, as specified in each recipient's approved application in accordance with the "Section 9813 State Planning Grants for Mobile Crisis Intervention Services Cooperative Agreement." To ensure maximum state flexibility and to reduce the reporting burden on states as much as possible, states will submit quarterly and final progress reports in their own preferred format. CMS will not require states to use a standardized template or form. When ready, the Notice of Funding Opportunity will be posted on the *Grants.gov* website; *Form Number:* CMS-10398 (#71) (OMB control number: 0938-1148); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 20; *Total Annual Responses:* 80; *Total Annual Hours:*

¹ https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/infocreg/PRA_Gen_ICRs_5-28-2010.pdf.

320. (For policy questions regarding this collection contact Effie George at 410-786-8639.)

Dated: May 12, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021-10294 Filed 5-14-21; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970-0401]

Submission for OMB Review; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB #0970-0401). There are no changes to the proposed types of information collection or uses of data, but ACF is requesting an increase to the estimated number of respondents.

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.

SUPPLEMENTARY INFORMATION:

Description: Executive Order 12862 directs federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. As outlined in Memorandum M-11-26, the Office of Management and Budget (OMB) worked with agencies to create a Fast Track Process to allow agencies to obtain timely feedback on service delivery while ensuring that the information collected is useful and minimally burdensome for the public, as required by the Paperwork Reduction Act of 1995. ACF created this generic clearance in response to this effort by OMB.

In order to work continuously to ensure that the ACF programs are effective and meet our customers’ needs, we use this Fast Track generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable

ACF to garner customer and stakeholder feedback in an efficient, timely manner in accord with our commitment to improving service delivery. The information collected from our customers and stakeholders helps ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative, and actionable communications between ACF and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management.

Per Memorandum M-11-26, information collection requests submitted under this Fast Track generic will be considered approved unless OMB notifies ACF otherwise within 5 days.

Respondents: ACF program participants, potential program participants, stakeholders, and other customers.

Annual Burden Estimates

Based on the use of this generic clearance over the past 3 years, ACF is requesting an increase to the estimated burden based on use over the past three years.

Instrument	Total number of respondents	Average total number of responses per respondent	Average burden hours per response	Total burden hours
<i>Example instruments include:</i> Customer Comment Card/Complaint Form Customer Satisfaction Survey Usability Testing (e.g., Website or Software) Small Discussion Group. Focus Group.	175,000	1	Varies based on instrument. Most requests fall between 5 minutes and 1 hour.	25,000

Authority: Social Security Act, Sec. 1110. [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021-10334 Filed 5-14-21; 8:45 am]

BILLING CODE 4184-79-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Award to the University of Southern Maine Rural Health Research Center

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Supplemental Award.

SUMMARY: HRSA announces the award of a supplement in the amount of \$175,000 for a HRSA-funded cooperative agreement awarded to the University of Southern Maine Rural Health Research Center. The supplement will fund a comprehensive region wide assessment of health issues to improve health care in rural areas of the Northern Border Region (NBR) of the U.S.—Grant Number U1CRH03716.

FOR FURTHER INFORMATION CONTACT: For further information regarding this request, please contact Jennifer Burges

via email at jburges@hrsa.gov or by phone at (301) 945–3985).

SUPPLEMENTARY INFORMATION:

Intended Recipient of Award: University of Southern Maine.

Amount of the Non-Competitive Award: \$175,000.

Period of Supplemental Funding: 9/1/2020–08/31/2021.

CFDA Number: 93.155.

Authority: Section 711(b) of the Social Security Act (42 U.S.C. 912(b)(5)), as amended.

TABLE 1—RECIPIENTS AND AWARD AMOUNT

Grantee/organization name	Grant No.	State	FY 2020 authorized funding level	FY 2020 estimated supplemental funding
University of Southern Maine	U1CRH03716	ME	\$700,000	\$175,000

Justification: The Rural Health Research Center (RHRC) program’s purpose is to support high-quality, impartial, policy-relevant research to assist health care providers and decision/policy-makers at the federal, state, and local levels in better understanding the health care challenges faced by rural communities to improve health care in rural areas. RHRC recipients conduct policy-oriented health services research, update trend analyses and existing research, and conduct necessary literature reviews on rural health issues and synthesize the issues into publically available policy briefs designed to improve health care in rural areas.

In fiscal year 2021 departmental appropriations report language, HRSA’s Federal Office of Rural Health Policy was directed to fund programs to assist the NBR, which is comprised of the States of Vermont, Maine, New York and New Hampshire. As part of that directive, HRSA intends to work in consultation with the Northern Border Region Commission to fund one RHRC to do a comprehensive region wide assessment of health, health outcomes, health needs, and health assets for the purpose of improving health care in rural areas within the NBR. The only RHRC positioned to do this work is the University of Southern Maine. It is the only RHRC that is located within the NBR states that has the capability to research regional rural health care needs and has experience working with the required data from these states. The

proposed activities are within the scope of their current RHRC grant.

Diana Espinosa,

Acting Administrator.

[FR Doc. 2021–10338 Filed 5–14–21; 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, of 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 April 1, 2021, through April 30, 2021. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing 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 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, Healthcare 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.

Diana Espinosa,

Acting Administrator.

List of Petitions Filed

1. Julie Parrish, Lexington, Kentucky, Court of Federal Claims No: 21–1149V
2. Alison Stiegler, Novato, California, Court of Federal Claims No: 21–1152V
3. Madelyn Malloy, Phoenix, Arizona, Court of Federal Claims No: 21–1153V
4. Hussein Ali Jabbar on behalf of F. A., St. Louis, Missouri, Court of Federal Claims No: 21–1155V
5. Victoria Thorn, Washington, District of Columbia, Court of Federal Claims No: 21–1156V
6. Neana Gatica, Orange, California, Court of Federal Claims No: 21–1158V
7. Barry Taerbaum, Glenview, Illinois, Court of Federal Claims No: 21–1159V
8. Dorinda K. Perez, Santa Clarita, California, Court of Federal Claims No: 21–1160V
9. Jeffrey Kaufman, Burlington, Vermont, Court of Federal Claims No: 21–1161V
10. Samantha O’Connell, Erie, Pennsylvania, Court of Federal Claims No: 21–1162V
11. Belarmina Flores-Ayala, Chowchilla, California, Court of Federal Claims No: 21–1163V
12. Alban Cooper, Washington, District of Columbia, Court of Federal Claims No: 21–1164V
13. Teresa Rivera on behalf of Estate of Angel Manuel Berrios Silva, Deceased, Englewood, New Jersey, Court of Federal Claims No: 21–1172V
14. Tamara E. Maynard, Lexington, Kentucky, Court of Federal Claims No: 21–1173V
15. Tom Thompson, Woodbury, Minnesota, Court of Federal Claims No: 21–1175V
16. Kyle Hirst, South San Francisco, California, Court of Federal Claims No: 21–1176V
17. Maurice Drayton, Green Bay, Wisconsin, Court of Federal Claims No: 21–1177V
18. Janet Hagos, San Jose, California, Court of Federal Claims No: 21–1181V
19. Christine Perkins, Iowa City, Iowa, Court of Federal Claims No: 21–1182V
20. Karen Zeisler, Toledo, Ohio, Court of Federal Claims No: 21–1184V
21. Miranda Chu, Vancouver, Washington, Court of Federal Claims No: 21–1185V
22. Loren K. Levy, Rancho Palos Verdes, California, Court of Federal Claims No: 21–1187V
23. Paul M. Kestel, Storm Lake, Iowa, Court of Federal Claims No: 21–1188V
24. Cori Bratley on behalf of J. M., Plano, Texas, Court of Federal Claims No: 21–1189V
25. Melly Grizzell, Las Vegas, Nevada, Court of Federal Claims No: 21–1191V
26. Nelson Ortiz, Washington, District of Columbia, Court of Federal Claims No: 21–1192V
27. Kenneth Onwubiko, North Phoenix, Arizona, Court of Federal Claims No: 21–1193V
28. Jamie Handley, Glendale, Arizona, Court of Federal Claims No: 21–1194V
29. Carolyn Hall, Matthews, North Carolina, Court of Federal Claims No: 21–1195V
30. Jasmin Flores, Boston, Massachusetts, Court of Federal Claims No: 21–1196V
31. Kimberly Benz, Greensburg, Pennsylvania, Court of Federal Claims No: 21–1197V
32. Alexia Pena, Los Angeles, California, Court of Federal Claims No: 21–1199V
33. James Quick, Cullman, Alabama, Court of Federal Claims No: 21–1201V
34. Jamie Myers on behalf of A.C., Spokane, Washington, Court of Federal Claims No: 21–1205V
35. Carol Jenkins, Washington, District of Columbia, Court of Federal Claims No: 21–1206V
36. Elizabeth Gompf, Washington, District of Columbia, Court of Federal Claims No: 21–1207V
37. Lisa A. Brancheau, Riverview, Michigan, Court of Federal Claims No: 21–1209V
38. Brian Tacher, Cape Coral, Florida, Court of Federal Claims No: 21–1213V
39. Ashley Baldwin, Athens, Texas, Court of Federal Claims No: 21–1215V
40. Sharon Kantner, Washington, District of Columbia, Court of Federal Claims No: 21–1216V
41. Mikhail Roubakha, Chicago, Illinois, Court of Federal Claims No: 21–1217V
42. Latisha Beach, Morristown, Tennessee, Court of Federal Claims No: 21–1218V
43. Stephanie Brooks, Charlotte, North Carolina, Court of Federal Claims No: 21–1219V
44. Thomas Kenny, Philadelphia, Pennsylvania, Court of Federal Claims No: 21–1221V
45. Amorette M. Burgess, Beachwood, Ohio, Court of Federal Claims No: 21–1222V
46. Nikki Hysong-Wiggins, Washington, District of Columbia, Court of Federal Claims No: 21–1224V
47. Howard Beech, Boscobel, Wisconsin, Court of Federal Claims No: 21–1225V
48. Brooke Offhaus, Merced, California, Court of Federal Claims No: 21–1226V
49. Savannah Sharpe, San Mateo, California, Court of Federal Claims No: 21–1228V
50. Adwoa Ampofo-Addo, Oakwood Village, Illinois, Court of Federal Claims No: 21–1231V
51. Karon Matheny, Hartford, Alabama, Court of Federal Claims No: 21–1232V
52. Eva Magana, Salinas, California, Court of Federal Claims No: 21–1234V
53. Helen Brummett, Fuquay-Varina, North Carolina, Court of Federal Claims No: 21–1235V
54. Jadon Espinosa, Cape Coral, Florida, Court of Federal Claims No: 21–1236V
55. Jack Robert Day, Cleveland, Ohio, Court of Federal Claims No: 21–1237V
56. Tina Michelle Grubbs-Roberts, Gainesville, Georgia, Court of Federal Claims No: 21–1238V
57. Abraham Klein and Shifra Kahan on behalf of C.K., New York, New York, Court of Federal Claims No: 21–1239V
58. Jessica Willey, Chittanooga, California, Court of Federal Claims No: 21–1240V
59. Matthew Dupleasis, Waupun, Wisconsin, Court of Federal Claims No: 21–1241V
60. Elizabeth D’Alessio, Aurora, Illinois, Court of Federal Claims No: 21–1242V

61. Brittany Moore on behalf of S.J.M., Mobile, Alabama, Court of Federal Claims No: 21–1244V
62. Margo Ramarui, Washington, District of Columbia, Court of Federal Claims No: 21–1245V
63. Amanda Farlin, Akron, Ohio, Court of Federal Claims No: 21–1247V
64. Hilda Leon Alvarado, Villalba, Puerto Rico, Court of Federal Claims No: 21–1248V
65. Karen Barrera, Weslaco, Texas, Court of Federal Claims No: 21–1249V
66. Joseph Savino, Ronkonkoma, New York, Court of Federal Claims No: 21–1250V
67. Anne Zaratsian, Beachwood, Ohio, Court of Federal Claims No: 21–1251V
68. Raviraj Bhatane, Santa Clara, California, Court of Federal Claims No: 21–1252V
69. Glendaly Ramos Rodriguez, Vega Alta, Puerto Rico, Court of Federal Claims No: 21–1253V
70. Gary Neary, Brooklyn, New York, Court of Federal Claims No: 21–1254V
71. Janet M. Engels, Queensbury, New York, Court of Federal Claims No: 21–1255V
72. Jodie Johnson, Mechanickville, New York, Court of Federal Claims No: 21–1256V
73. Christine M. Boyle, Akron, Ohio, Court of Federal Claims No: 21–1257V
74. Jerry Stewart, Tampa, Florida, Court of Federal Claims No: 21–1258V
75. Hugo Reyes, Providence, Rhode Island, Court of Federal Claims No: 21–1259V
76. Richard Pollack, Winchester, Virginia, Court of Federal Claims No: 21–1262V
77. Rene Baldi, Timonium, Maryland, Court of Federal Claims No: 21–1264V
78. Jennifer Silacci, Boulder, Colorado, Court of Federal Claims No: 21–1265V
79. Laura McGowen, Bryant, Arkansas, Court of Federal Claims No: 21–1266V
80. Allison Bay, Phoenix, Arizona, Court of Federal Claims No: 21–1267V
81. Kimberly Hartline, Ellicott City, Maryland, Court of Federal Claims No: 21–1269V
82. Bernice Edmonds, Jacksonville, Florida, Court of Federal Claims No: 21–1274V
83. Elaine Lambert, Nashua, New Hampshire, Court of Federal Claims No: 21–1275V
84. Isaiah Guy, Boscobel, Wisconsin, Court of Federal Claims No: 21–1276V
85. Sandra Yockteng, Boca Raton, Florida, Court of Federal Claims No: 21–1277V
86. Eve Y. Thao, Milwaukee, Wisconsin, Court of Federal Claims No: 21–1280V
87. Clarence Reynolds, Washington, District of Columbia, Court of Federal Claims No: 21–1284V
88. Cheryl Larson, Washington, District of Columbia, Court of Federal Claims No: 21–1285V
89. Megan Laughlin, Washington, District of Columbia, Court of Federal Claims No: 21–1286V
90. Joseph Behlke, Phoenix, Arizona, Court of Federal Claims No: 21–1287V
91. Roccalina Maragliano, Everett, Washington, Court of Federal Claims No: 21–1290V
92. Sandra Buysse, Jasper, Minnesota, Court of Federal Claims No: 21–1291V
93. Mikayla Vacher, Phoenix, Arizona, Court

- of Federal Claims No: 21–1294V
94. David Drapiewski, Seattle, Washington, Court of Federal Claims No: 21–1296V
95. William Lewis, New York, New York, Court of Federal Claims No: 21–1298V
96. Peter Presson, Portland, Oregon, Court of Federal Claims No: 21–1299V
97. Lori Brust, Massapequa, New York, Court of Federal Claims No: 21–1300V
98. Mark Peters, Marshfield, Wisconsin, Court of Federal Claims No: 21–1301V
99. Carol Winston, Chicago, Illinois, Court of Federal Claims No: 21–1302V
100. Brian Korpacz, Phoenix, Arizona, Court of Federal Claims No: 21–1303V

[FR Doc. 2021–10337 Filed 5–14–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0330]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 16, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, Sherrette.Funn@hhs.gov or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0330–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Appellant Climate Survey.

Type of Collection: Revision.

OMB No.: 0990–0330.

Abstract: The annual OMHA Appellant Climate Survey is a survey of Medicare beneficiaries, providers, suppliers, or their representatives who participated in a hearing before an Administrative Law Judge (ALJ) from OMHA. Appellants dissatisfied with the outcome of their Level 2 Medicare appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling. OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173) and became operational on July 1, 2005. The MMA legislation and implementing regulations issued on March 8, 2007, instituted a number of changes in the appeals process. The MMA legislation also directed HHS to consider the feasibility of conducting hearings using telephone or video-conference (VTC) technologies. In carrying out this mandate, OMHA makes use of both telephone and VTC to provide appellants with a vast nationwide network Field Offices for hearings. The first 3-year administration cycle of the OMHA survey began in fiscal year (FY) 2008, a second 3-year cycle began in FY 2011, a third 3-year cycle began in FY 2014, and a fourth 3-year cycle began in FY 2018. The survey will continue to be conducted annually over a 3-year period with the next data collection cycle beginning in FY 2021. Data collection instruments and recruitment materials will be offered in English and Spanish. The estimated total number of respondents per FY starting 2021 is 800 respondents. The estimated total annual burden hours starting FY 2021 is 200 hours.

Type of Respondent: The survey will be conducted annually, and survey respondents will consist of Medicare beneficiaries and non-beneficiaries (*i.e.*, providers, suppliers) who participated in a hearing before an OMHA ALJ. OMHA will draw a representative, nonredundant sample of appellants whose cases have been closed in the last 6 months.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Beneficiaries	400	1	15/60	100
Non-Beneficiaries	400	1	15/60	100
Total	800	1	15/60	200

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021-10280 Filed 5-14-21; 8:45 am]

BILLING CODE 4150-46-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice To Announce the National Eye Institute (NEI) Draft Strategic Plan; Request for Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This Request for Information (RFI) is intended to gather broad public input to assist the National Eye Institute (NEI), National Institutes of Health (NIH) in reviewing the draft strategic plan document accessible from the NEI Strategic Plan website. NEI invites input from vision researchers in academia and industry, health care professionals, patient advocates and advocacy organizations, scientific or professional organizations, federal agencies, and other interested members of the public. Organizations are strongly encouraged to submit a single response that reflects the views of their organization and their membership as a whole.

DATES: This Request for Information is open for public comment and must be received by June 7, 2021 to ensure consideration.

ADDRESSES: Comments must be submitted electronically at NEIPlan@mail.nih.gov.

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to NEIPlan@mail.NIH.gov and to Nora Wong, 301-496-4308, nora.wong@NIH.gov. To learn about strategic planning activities at NEI, please visit <https://www.nei.nih.gov/about/strategic-planning>.

SUPPLEMENTARY INFORMATION: Charged to protect and preserve the eyes and vision of the American people, NEI supports basic and clinical research that unravels

the mysteries of how vision works at a fundamental level and provides patients with new therapies and standards of care that maintain and improve quality of life.

In accordance with the 21st Century Cures Act, NIH institutes are required to regularly update their strategic plans. The new NEI Strategic Plan seeks to distill those reflections into a cohesive document that will guide efforts to address those gaps and opportunities over the next five years. NEI has always been—and will continue to be—committed to high quality investigator-initiated research and will fund the best science across the broad spectrum of vision research. Ultimately, NEI stakeholders provide the catalyst for identifying and implementing the goals.

NEI has been incorporating broad public and expert input in the development of this plan, starting in the winter of 2019–2020 with an initial Request for Information (RFI). This public comment period engaged perspectives from scientists, clinicians, patients, vision advocates, and the public. NEI received a robust response to the RFI, which informed the selection and agendas of expert panels for seven cross-cutting areas of emphasis during the spring and summer of 2020. NEI incorporated the topics covered in the RFI and panels into the planning document and presented the information publicly before the NAEC.

Under each area of emphasis, NEI provides a summary of goals related to research needs, gaps, and opportunities for the institute to address over the next five years.

Areas of Emphasis

Visual System in Health and Disease

- From Genes to Disease Mechanisms
- Biology and Neuroscience of Vision
- Immune System and Eye Health

Capitalizing on Emerging Fields

- Regenerative Medicine
- Data Science

Preventing Vision Loss and Enhancing Well-Being

- Individual Quality of Life

- Public Health and Disparities Research

Information Requested

This RFI invites comments from researchers in academia and industry, health care professionals, patient advocates and health advocacy organizations, scientific or professional organizations, federal agencies, and other interested members of the public on the draft NEI Strategic Plan at <https://www.nei.nih.gov/about/strategic-planning>. When developing comments, please read the draft strategic plan and provide any high-level, content related feedback by submitting a written response to neiplan@mail.nih.gov. Organizations are strongly encouraged to submit a single response that reflects the views of their organization and membership.

Results of this RFI and updated Strategic Plan will be presented at the June 11, 2021, meeting of the NAEC and the finalized Strategic Plan will be posted on the NEI website once it is approved.

Responses

Responses to this RFI are voluntary. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

NEI encourages the dissemination of this RFI opportunity to broader networks and is looking forward to receiving input from the community. Please provide a written response to NEIPlan@mail.nih.gov by June 7, 2021.

Dated: April 20, 2021.

Nora M. Wong,

Health Science Policy Analyst, National Eye Institute, National Institutes of Health.

[FR Doc. 2021-10287 Filed 5-14-21; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative Cell Census Network (BICCN): Scalable Tech and Tools for Brain Cell Census (R01).

Date: June 10, 2021.

Time: 9:00 a.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 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-9734, millerda@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Secondary Analysis and Archiving of Data.

Date: June 11, 2021.

Time: 9:30 a.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 (Telephone Conference Call).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Mental Health, 6001 Executive Blvd., Neuroscience Center, Room 6150, Bethesda, MD 20892, 301-435-1260, jasenka.borzan@nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Data Integration and Analysis.

Date: June 11, 2021.

Time: 3:00 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 (Telephone Conference Call).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Mental Health, 6001 Executive Blvd., Neuroscience Center, Room 6150, Bethesda, MD 20892, 301-435-1260, jasenka.borzan@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 12, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-10318 Filed 5-14-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R1-ES-2020-N089;
FXES11130100000-201-FF01E00000]**

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Five Species From American Samoa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Recovery Plan for Five Species from American Samoa. The draft recovery plan includes specific goals, objectives, and criteria necessary to remove these species from the Federal List of Endangered and Threatened Wildlife. We request review of this draft recovery plan and invite comments from local, Territorial, and Federal agencies, nongovernmental organizations, and the public.

DATES: To ensure consideration, we must receive written comments on or before August 16, 2021. However, we will accept information about the species at any time.

ADDRESSES: *Reviewing documents:* If you wish to review the draft recovery plan, you may obtain copies on our website, at https://ecos.fws.gov/docs/recovery_plan/Draft_American_Samoa_Recovery_Plan.pdf. You may also request copies of the draft recovery plan by contacting Grant Canterbury at the email address below.

Submitting comments: If you wish to comment, submit your comments by one of the following methods:

1. *U.S. Mail:* You may submit written comments and materials to Field Supervisor, Attention: Draft American Samoa Recovery Plan, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3122, Honolulu, HI 96850; or

2. *Email:* You may send comments by email to grant_canterbury@fws.gov. Please include "Draft American Samoa Recovery Plan Comments" in the subject line.

FOR FURTHER INFORMATION CONTACT: Megan Laut, Recovery Coordinator, at the above U.S. mail address, or by telephone at (808) 792-9400. Individuals who are hearing impaired may call the Federal Relay Service at (800) 877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Recovery Plan for Five Species from American Samoa. This recovery plan addresses recovery of one mammal (South Pacific subspecies of Pacific sheath-tailed bat or peapea vai [*Emballonura semicaudata semicaudata*], two birds (mao [*Gymnomyza samoensis*] and the American Samoa distinct population segment (DPS) of friendly ground-dove or tuaimeo [*Gallicolumba stairi*]), and two snails (*Eua zebrina* and *Ostodes strigatus*). The snails and the American Samoa DPS of tuaimeo are endemic to American Samoa; the mao and peapea vai appear to be extirpated from American Samoa, but populations of these species remain extant outside of U.S. jurisdiction.

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. The ESA requires the

development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The purpose of a recovery plan is to provide a feasible and effective roadmap for a species' recovery, with the goal of improving its status and managing its threats to the point at which protections under the ESA are no longer needed. Recovery plans must be designed so that all stakeholders and the public understand the rationale behind the recovery program, whether they were involved in writing the plan or not, and recognize their role in its implementation. We are requesting submission of any information that enhances the necessary understanding of the species' biology and threats and its recovery needs and related implementation issues or concerns, to ensure that we have assembled, considered, and incorporated the best available scientific and commercial information into the draft recovery plan.

Recovery plans provide important guidance to the Service, States, other partners, and the public on methods of minimizing threats to listed species and objectives against which to measure the progress towards recovery; they are guidance and not regulatory documents. A recovery plan identifies, organizes, and prioritizes recovery actions and is an important guide that ensures sound scientific decision-making throughout the recovery process, which can take decades.

The recovery criteria established in a recovery plan (such as those proposed in this draft recovery plan) will serve as an indicator that a review of the species' status is advisable. We may consider downlisting, or if appropriate, removal from the Federal List of Endangered and Threatened Wildlife following a five-factor threats analysis in accordance with section 4(a)(1) of the ESA.

Draft Recovery Plan

The draft recovery plan recommends a combination of recovery actions including biosecurity measures; control of introduced predators including rats, cats and invertebrates; forest habitat protection; species surveys and research; and translocation to additional islands.

Request for Public Comments

Section 4(f) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). Substantive comments may or may not result in

changes to the recovery plan. Comments regarding recovery plan implementation will be forwarded, as appropriate, to Federal or other entities so they can be taken into account during the course of implementing recovery actions.

Responses to individual commenter will not be provided. However, we will provide a summary of how we addressed substantive comments in an appendix to the approved recovery plan.

We invite written comments on the draft recovery plan. In particular, we are interested in additional information regarding the current threats to the species, ongoing beneficial management efforts, and the costs associated with implementing the recommended recovery actions.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act (16 U.S.C. 1533 (f)).

Rolland White,

Acting Deputy Regional Director.

[FR Doc. 2021-10324 Filed 5-14-21; 8:45 am]

BILLING CODE 4333-15-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1155 (Bond Return)]

Certain Luxury Vinyl Tile and Components Thereof; Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion for Return of Bonds Due to Settlement; Return of Bond

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has determined not to review an initial determination ("ID") (Order No. 37) granting complainants' motion for return of bonds posted by Timeless Designs Import LLC ("Timeless Designs") on behalf of respondent Jiangsu Divine Building Technology Development Co. Ltd. ("Divine") during the period of Presidential review. The bonds at issue are hereby returned to Timeless Designs.

FOR FURTHER INFORMATION CONTACT:

Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. 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: On May 16, 2019, the Commission instituted this investigation based on a complaint filed by Mohawk Industries, Inc. of Calhoun, Georgia; Flooring Industries Ltd. Sarl of Bertrange, Luxembourg; and IVC US Inc. of Dalton, Georgia (collectively, "Complainants"). 84 FR 22161 (May 16, 2019). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain luxury vinyl tiles by reason of infringement of certain claims of U.S. Patent Nos. 9,200,460; 10,208,490; and 10,233,655 (collectively, "the Asserted Patents"). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names forty-five respondents, including Divine of Jiangsu, China. *Id.* The Office of Unfair Import Investigations ("OUII") also participated in the investigation. *Id.*

On May 15, 2020, the presiding ALJ issued an ID granting a motion for summary determination of a violation of section 337. On September 16, 2020, the Commission affirmed the ID's finding of a violation. Comm'n Op. at 19-20 (Sept. 16, 2020); Order No. 36 (May 15, 2020). The Commission issued a general exclusion order ("GEO") with respect to the Asserted Patents. *Id.* The

Commission also set a bond of \$0.08 per square foot of infringing luxury vinyl tile products and components thereof imported during the period of Presidential review. *Id.*

On January 27, 2021, Complainants filed a motion for the return of bonds posted by Timeless Designs on behalf of Divine pursuant to the GEO during the presidential review period based on a settlement agreement between Complainants and Divine. Timeless Designs is Divine's customer. On February 10, 2021, Complainants filed a supplement to the pending motion to include a redacted copy of the settlement agreement referenced therein between Complainants and Divine. On February 11, 2021, OUII filed a response supporting the motion as supplemented.

On March 26, 2021, the ALJ issued the subject ID, which grants Complainants' motion for the return of bonds pursuant to Commission Rule 210.50(d)(1) (19 CFR 210.50(d)(1)). Order No. 37 (Mar. 26, 2021). The ID notes that the presidential review period expired on November 16, 2020, and the motion, as supplemented, was filed on February 10, 2021, within 90 days of the expiration of the presidential review period. *Id.* The ID also notes that, pursuant to Commission Rule 210.50(d)(1), a respondent—not the complainant—is expected to file a motion for return of its bond. The ID finds, however, that as the motion was filed on behalf of, and with approval by, the respondent, Divine, and the settlement between the parties is comprehensive, there is no substantive or procedural reason to deny the request to return the bond. *Id.*

No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The bonds at issue are hereby ordered to be returned to Timeless Designs.

The Commission vote for this determination took place on May 12, 2021.

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: May 12, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-10342 Filed 5-14-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1122-0007]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 16, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202-514-5430 or *Catherine.poston@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-0007. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105-277. In the Violence Against Women Act of 2000 and again in 2005, Congress statutorily authorized the LAV Program. 34 U.S.C. 20121. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden

to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: May 12, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021-10289 Filed 5-14-21; 8:45 am]

BILLING CODE 4410-FX-P

DEPARTMENT OF JUSTICE

[OMB Number 1105-0118]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office of the Chief Information Officer, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office of the Chief Information Officer, Department of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until June 16, 2021.

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: 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 Office of the Chief Information Officer, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Existing.

2. *The Title of the Form/Collection:* Tribal Access Program Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is Office of the Chief Information Officer.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Tribal Governments. The U.S. Department of Justice (DOJ) launched the Tribal Access Program for National Crime Information (TAP) provide tribes access to national crime information systems for both civil and criminal purposes. DOJ has developed an application for use by federally recognized tribes interested in participating in TAP.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents at 60 minutes each.

6. *An estimate of the total public burden (in hours) associated with the collection:* An estimated 50 burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 12, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021-10288 Filed 5-14-21; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1122-0016]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 16, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202-514-5430 or Catherine.poston@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision to Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Transitional Housing Assistance Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-0016. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 120 grantees of the Transitional Housing Assistance Grant Program (Transitional Housing Program) whose eligibility is determined by statute. This discretionary grant program provides transitional housing, short-term housing assistance, and related support services for individuals who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence, dating violence, sexual assault, or stalking, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Eligible applicants are States, units of local government, Indian tribal governments, and other organizations, including domestic violence and sexual assault victim services providers, domestic violence or sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 120 respondents (grantees) approximately one hour to complete the Semi-Annual Progress Report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. A Transitional Housing Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 240 hours, that is 120 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: May 12, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021-10290 Filed 5-14-21; 8:45 am]

BILLING CODE 4410-FX-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

206th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 206th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Thursday, June 24 and Friday, June 25, 2021.

The two-day meeting will begin at 9:00 a.m. and end at approximately 5:30 p.m. (ET) each day with a one-hour break for lunch. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA).

The Advisory Council will study the following topics: (1) Gaps in Retirement Savings Based on Race, Ethnicity and Gender, and (2) Understanding Brokerage Window Prevalence, Usage, and Implementation. Descriptions of these topics, once finalized, will be available on the ERISA Advisory Council's web page at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council>.

The agenda and instructions for public access to the teleconference meeting will be available on the ERISA Advisory Council's web page at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council> approximately one week prior to the meeting.

Organizations or members of the public wishing to submit a written statement may do so on or before Thursday, June 17, 2021, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to

donahue.christine@dol.gov. Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Thursday, June 17, 2021, will be included in the record of the meeting. No deletions, modifications, or redactions will be made to the statements received as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary on or before Thursday, June 17, 2021, via email to donahue.christine@dol.gov or by telephoning (202) 693-8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the Executive Secretary on or before Thursday, June 17, 2021, via email to donahue.christine@dol.gov or by telephoning (202) 693-8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 11th day of May, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2021-10296 Filed 5-14-21; 8:45 am]

BILLING CODE 4510-29-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-429, OMB Control No. 3235-0480]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 9b-1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 9b-1 (17 CFR 240.9b-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 9b-1 (17 CFR 240.9b-1) sets forth the categories of information required to be disclosed in an options disclosure document (“ODD”) and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b-1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b-1 requires a broker-dealer to furnish to each customer an ODD and any amendments prior to accepting an order to purchase or sell an option on behalf of that customer or when approving a customer’s account for options trading.

There are 16 options markets¹ that must comply with Rule 9b-1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total time burden for options markets per year is approximately 384 hours (16 options markets × 8 hours per amendment × 3 amendments). The estimated cost for an in-house attorney is \$420 per hour,² resulting in a total internal cost of compliance for these respondents of approximately \$161,280 per year (384 hours at \$420 per hour).

In addition, approximately 1,020 broker-dealers³ must comply with Rule 9b-1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156

ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of approximately 78 minutes or 1.3 hours. Thus, the total time burden per year for broker-dealers is approximately 1,326 hours (1,020 broker-dealers × 1.3 hours). The estimated cost for a general clerk of a broker-dealer is \$63 per hour,⁴ resulting in a total internal cost of compliance for these respondents of approximately \$83,538 per year (1,326 hours at \$63 per hour).

The total time burden for all respondents under this rule (both options markets and broker-dealers) is approximately 1,710 hours per year (384 + 1,326), and the total internal cost of compliance is approximately \$244,818 per year (\$161,280 + \$83,538).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street, NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: May 12, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10316 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

¹ The sixteen options markets are as follows: BOX Exchange LLC, Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, Nasdaq Options Market (NOM), NYSE Arca, Inc., and NYSE American LLC.

² SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the \$420 figure is based on the 2013 figure (\$380) adjusted by the inflation rate calculated using the Bureau of Labor Statistics’ CPI Inflation Calculator. The \$380 per hour figure for an Attorney is from SIFMA’s *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

³ The estimate of 1,020 broker-dealers required to comply with Rule 9b-1 is derived from Item 12 of the Form BD (OMB Control No. 3235-0012). This estimate may be high as it includes broker-dealers that engage in only a proprietary business, and as a result are not required to deliver an ODD, as well as those broker-dealers subject to Rule 9b-1.

⁴ The \$63 figure is based on the 2013 figure (\$57) adjusted for inflation. See *supra* note 2. As noted above, SIFMA did its last annual survey in 2013 and will not resume the survey process.

Accordingly, the \$63 figure is based on the 2013 figure (\$57) adjusted for inflation. The \$57 per hour figure for a General Clerk is from SIFMA’s *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91834; File No. SR-ICC-2021-006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures

May 11, 2021.

I. Introduction

On March 25, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the ICC Clearing Rules (the “Rules”) and the ICC Exercise Procedures (“Exercise Procedures”) in connection with the clearing of credit default index Swaptions (“Index Swaptions”).³ The proposed rule change was published for comment in the **Federal Register** on April 7, 2021.⁴ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes revising its Rules and Exercise Procedures related to the clearing of Index Swaptions.⁵ In the case of Index Swaptions cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx index credit default swaps that are accepted for clearing by ICC and which would be automatically cleared by ICC upon exercise of the Index Swaption. ICC proposes minor revisions to support the clearing of Index Swaptions, including updates related to iTraxx Index Swaptions, an enhancement to the exercise and assignment process, and other clarifications.

A. Rule Amendments

The proposed amendments consist of minor revisions to Rule 26R-319, which addresses procedures for settlement of an exercised Index Swaption.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures, Exchange Act Release No. 91450 (April 1, 2021), 86 FR 18087 (April 7, 2021) (“Notice”).

⁵ The description of the proposed rule change is excerpted from the Notice.

Additional settlements may be required under Rule 26R–319(b) if one or more Credit Events has occurred with respect to the underlying index at or prior to the expiration date of the Index Swaption. Regarding the determination of Index Swaption settlement amounts, Rule 26R–319(b)(ii) currently contemplates the inclusion of an additional accrual-related component (“Additional Accrual”). However, ICC Circular 2020/070 describes how ICC determines settlement amounts for cleared Index Swaptions and states that, in light of industry discussions, the Additional Accrual for such transactions will be zero. Amended Rule 26R–319(b)(ii) would omit the description of the Additional Accrual, which would be zero for settlement of Index Swaptions. The circular and presentation on the determination of Index Swaption settlement amounts would remain on ICC’s website.

Regarding iTraxx Index Swaptions, ICC proposes to amend Rule 26R–319(c), which applies in the case of a relevant M(M)R Restructuring Credit Event, which is when the restructuring of debt constitutes a credit event that triggers a CDS contract. Minor streamlining revisions to the exercise process rules include the proposed omission of paragraph (i) related to the delivery of MP Notices by Swaption Buyer and Swaption Sellers. Further, ICC does not propose any changes to paragraph (ii), which details how an Underlying New Trade comes into effect. An Underlying New Trade remains defined in Rule 26R–102 as a new single name CDS trade that would arise upon exercise of an Index Swaption where a relevant Restructuring Credit Event, if applicable, has occurred with respect to a reference entity in the relevant index. ICC also proposes to amend paragraph (iii) and remove paragraph (iv) which currently discuss the treatment of the Underlying New Trade in respect of the Event Determination Date. Instead, amended paragraph (iii) would discuss the treatment of the Underlying New Trade depending on whether the expiration date occurred prior to, or on or following, the commencement of the Credit Event Notice Triggering Period (as defined in the Restructuring Procedures). If the expiration date occurs prior to commencement of the period, the Underlying New Trade will be subject to the provisions of the CDS Restructuring Rules in Subchapter 26E (and may become a Triggered Restructuring CDS Transaction thereunder). If the Expiration Date occurs on or following commencement

of such period, neither party will be permitted to deliver an MP Notice, the Underlying New Trade cannot become a Triggered Restructuring CDS Transaction and no Event Determination Date or settlement will occur.

B. Exercise Procedures

The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues.

The proposal would enhance the exercise and assignment process in the Exercise Procedures. Specifically, the proposal would revise the definition of Pre-Exercise Notification Period in Paragraph 1 to reference Paragraph 2.2(e) in respect of the Pre-Exercise Notification Period. Paragraph 2.2(e) describes the Pre-Exercise Notification Period during which an exercising party can submit, modify, and/or withdraw preliminary exercise notices. The Exercise Procedures allow firms to submit preliminary exercise notices such that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window. The proposed changes would allow ICC to identify each exercising party’s “in the money” Index Option open positions for the relevant expiration date and submit, on behalf of the exercising party, preliminary exercise notices for all such in “the money” positions. Such preliminary exercise notices submitted by ICC for an exercising party may be modified or withdrawn by the exercising party during the Pre-Exercise Notification Period. Additionally, the proposal would make a related change to Paragraph 2.2(i) to reference ICC’s ability to submit, on behalf of an exercising party, a preliminary exercise notice.

The proposal would also update Paragraphs 2.6 and 2.8, which include procedures to address a failure of the electronic system established by ICC for exercise. In such case, Paragraph 2.6 provides ICC with several options including, canceling and rescheduling the Exercise Period (*i.e.*, the period on the expiration date of an Index Swaption during which the Swaption Buyer may deliver an exercise notice to ICC to exercise all or part of such Index Swaption). The proposed changes would clarify that canceling and rescheduling the Exercise Period may

include scheduling a new Pre-Exercise Notification Period, in which case any preliminary exercise notices and exercise notices submitted prior will be ineffective. Paragraph 2.8 addresses the situation where ICC will automatically exercise on the expiration date each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be “in the money” on such date. The proposal would include additional language relating to its determination of whether an Index Swaption is “in the money” in connection with the clearing of iTraxx Index Swaptions.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rules 17Ad–22(e)(1) and 17Ad–22(e)(17)(i) and (ii) thereunder.⁸

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.⁹

As discussed above, the proposed rule change would make minor revisions to the Rules for settlement of an exercised Index Swaption. Specifically, the proposal would revise Rule 26R–319(b)(ii) to remove the description of the Additional Accrual in the determination of Index Swaption settlement amounts. The Commission believes this minor revision helps to simplify ICC’s settlement rules with respect to settlement of Index Swaptions, for which the Additional Accrual will be zero, which could make it easier to understand the potential Index Swaption settlement amounts easier, thereby promoting the prompt

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q–1(b)(3)(F).

⁸ 17 CFR 240.17Ad–22(e)(1), (e)(17)(i) and (ii).

⁹ 15 U.S.C. 78q–1(b)(3)(F).

and accurate settlement of securities transactions.

Additionally, the proposal would amend ICC's Rules to omit and revise certain other information. Specifically, the proposal would amend Rule 26R-319(c), which applies in the case of a relevant M(M)R Restructuring Credit Event, by omitting a paragraph (i) related to the delivery of MP Notices by Swaption Buyers and Sellers, and removing paragraph (iv), which currently discusses the treatment of the Underlying New Trade in respect of the Event Determination Date. Instead, the proposed language in paragraph (iii) would discuss the treatment of the Underlying New Trade depending on whether the expiration date occurred prior to, or on or following, the commencement of the CEN Triggering Period. If the expiration date occurs prior to commencement of the period, the Underlying New Trade will be subject to the provisions of the CDS Restructuring Rules in Subchapter 26E. If the Expiration Date occurs on or following commencement of such period, neither party will be permitted to deliver an MP Notice, the Underlying New Trade cannot become a Triggered Restructuring CDS Transaction and no Event Determination Date or settlement will occur. The Commission believes that this proposed revision will ensure that only trades meeting the timing of the triggering period will be settled. This, in turn, promotes accurate clearance and settlement during specified periods as well as assuring the safeguarding of securities or funds in ICC's custody or control or for which it is responsible by ensuring only appropriate securities and funds are exchanged.

Further, as noted above, the Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues. First, the definition of Pre-Exercise Notification Period has been revised to include a reference to Paragraph 2.2(e), which itself describes the Pre-Exercise Notification Period during which an exercising party can submit, modify, and/or withdraw preliminary exercise notices such that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window. The Commission believes that this proposed change enhances the definition of this

term by cross-referencing a more complete description of this period. Additionally, the proposal would revise Paragraph 2.2(e), which would allow ICC to identify each exercising party's "in the money" Index Option open positions for the relevant expiration date and submit, on behalf of the exercising party, preliminary exercise notices for all such "in the money" positions. Further, such preliminary exercise notices submitted by ICC for an exercising party may be modified or withdrawn by the exercising party during the Pre-Exercise Notification Period. Additionally, the proposal would make a related change to Paragraph 2.2(i) to reference ICC's ability to submit, on behalf of an exercising party, a preliminary exercise notice. The Commission believes that these proposed changes to the procedures related to the pre-exercise notification period would enhance the procedures by clarifying ICC's role in identifying each Exercising Party's "in the money" Index Option Open Positions for the relevant Expiration Date and submitting preliminary notices. The Commission believes that this should help the preliminary notification process operate smoothly and ensure that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window, thereby increasing reliability of the process and helping to ensure prompt and accurate clearance and settlement of securities upon the exercise of Index Swaptions.

The proposed rule change would further revise the Exercise Procedures to account for the Pre-Exercise Notification Period during a systems failure. Specifically, as noted above, paragraph 2.6 provides ICC with several options including canceling and rescheduling the Exercise Period in the event of an exercise systems failure. The proposed changes would clarify that canceling and rescheduling the Exercise Period may include scheduling a new Pre-Exercise Notification Period, in which case any preliminary exercise notices and exercise notices submitted prior will be ineffective. The Commission believes that this proposed change would enhance the procedures by ensuring that pre-notifications do not result in erroneous exercises when there is a systems failure, thereby aiming to ensure accurate settlement and the safeguarding of securities and funds.

Paragraph 2.8 of the Exercise Procedures addresses the situation in which ICC will automatically exercise on the expiration date each open position in an Index Swaption that is

determined by ICC to be "in the money" on such date. As noted above, the Exercise Procedures would be amended to include additional language in this paragraph relating to its determination of whether an Index Swaption is "in the money." The Commission believes that this proposed change ensures that each of ICC's cleared products are appropriately and accurately exercised when there has been a systems failure, which in turn supports ICC's ability to promptly and accurately clear and settle securities transactions and safeguard securities and funds in its custody or control.

For the reasons stated above, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control or for which it is responsible, consistent with the Section 17A(b)(3)(F) of the Act.¹⁰

B. Consistency With Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.¹¹ As discussed above, the proposed changes to the Rules and Procedures should provide clear guidance for ICC's clearance and settlement of Index Swaptions by removing from the rules the reference to the Additional Accrual in the determination of Index Swaption settlement amounts. Similarly, amending Rule 26R-319(c) as noted above, which applies in the case of a relevant M(M)R Restructuring Credit Event, should provide a clear basis for the treatment of the Underlying New Trade depending on whether the expiration date occurred prior to, or on or following, the commencement of the CEN Triggering Period.

Further, the Commission believes that in proposing changes to the procedures related to the pre-exercise notification period clarifying ICC's role in identifying each Exercising Party's "in the money" Index Option Open Positions for the relevant Expiration Date and submitting preliminary notices, the procedures would provide a clear basis for the use of the preliminary instructions such as the final exercise instructions in the event of a communications failure during the exercise window.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(e)(1).

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(1).¹²

C. Consistency With Rule 17Ad-22(e)(17)

Rules 17Ad-22(e)(17)(i) and (ii) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls, and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.¹³ The Commission believes that by allowing ICC to identify each exercising party's "in the money" Index Option open positions for the relevant expiration date and submit preliminary exercise notices for all such in "the money" positions, ICC can mitigate the impact of a technology or communication error because they can be used as the final exercise instructions in the event of a communications failure during the exercise window. The Commission believes that such procedures should help mitigate the impact from technical issues to ensure that the system has a high degree of security, resiliency, and operational reliability. Similarly, the Commission believes that the proposed changes to the Exercise Procedures that, in the event of an exercise system failure, clarify that canceling and rescheduling the Exercise Period may include scheduling a new Pre-Exercise Notification Period, in which case any preliminary exercise notices and exercise notices submitted prior will be ineffective, enhances operational reliability of ICC's systems.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(17)(i) and (ii).¹⁴

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁵ and Rules 17Ad-22(e)(1) and 17Ad-22(e)(17)(i) and (ii).¹⁶

It is therefore ordered pursuant to Section 19(b)(2) of the Act¹⁷ that the proposed rule change (SR-ICC-2021-006), be, and hereby is, approved.¹⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10277 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91839; File No. SR-Phlx-2021-28]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Listing Rules Related to Bid/Ask Differentials for Long-Term Options Series

May 11, 2021.

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 May 4, 2021, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules at Options 2, Section 4, Obligations of Market Makers; Options 4, Section 8, Long-Term Options Contracts; Options 4A, Section 6, Position Limits; Options 4A, Section 12, Terms of Index Options Contracts; and Options 4C, Section 5, Series of U.S. Dollar-Settled Foreign Currency Options Contracts Open for Trading. The Exchange also proposes a technical amendment within Equity 11, Section 4, Payment on Delivery—Collect on Delivery.

The text of the proposed rule change is available on the Exchange's website at

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

<https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 Options 2, Section 4, Obligations of Market Makers; Options 4, Section 8, Long-Term Options Contracts; Options 4A, Section 6, Position Limits; Options 4A, Section 12, Terms of Index Options Contracts; and Options 4C, Section 5, Series of U.S. Dollar-Settled Foreign Currency Options Contracts Open for Trading.

The Exchange also proposes a technical amendment within Equity 11, Section 4, Payment on Delivery—Collect on Delivery.

Bid/Ask Differentials for Long-Term Options Series

Phlx Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) describes the bid/ask differentials for long-term options series for equity options, exchange-traded products, indexes, and U.S. dollar-settled foreign currencies, respectively. Currently, the bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for equity options and exchange-traded products as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than twelve (12) months for index options as provided for within Options 4A, Section 12(b)(2). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for U.S. dollar-settled foreign currency options as provided for within Options 4C, Section 5(a)(1)(C).

¹² 17 CFR 240.17Ad-22(e)(1).

¹³ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

¹⁴ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(1), (e)(17)(i) and (ii).

The Exchange proposes to centralize the bid/ask differentials from Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) within Options 2, Section 4(c)(1)(A) and add a sentence to the aforementioned rules that cites to Options 2, Section 4(b)(4)(i) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

Obsolete Listings

The Exchange proposes to remove references to SIG Oil Exploration & Production Index within Options 4A, Section 6(b)(i) and Supplementary Material to Options 4A, Section 12. The SIG Oil Exploration & Production Index has not been listed by Phlx since 2016. The Exchange also proposes to remove a reference to the SIG Energy MLP Index™ within Supplementary Material to Options 4A, Section 12 as it has not been listed on Phlx since 2017. The Exchange will file a rule change with the Commission in the event that it desires to list these products in the future.

Technical Amendment

The Exchange proposes to add the title, “Supplementary Material to Equity 11, Section 4” within Equity 11, Section 4 and renumber the rule text that follows which includes defined terms. The Exchange also proposes to correct a lettering issue within the rule. These amendments are non-substantive and intended solely to make the rule easier to read.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Bid/Ask Differentials for Long-Term Options Series

The Exchange’s proposal to amend Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) to relocate text concerning bid/ask differentials for

long-term option series is consistent with the Act. The Exchange’s proposal will centralize the bid/ask differentials within Options 2, Section 4(c)(1)(A) and add a sentence to Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) that cites to Options 2, Section 4(c)(1)(A) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Lead Market Makers and Market Makers with centralized information regarding their bid/ask differential requirements.

Obsolete Listings

The Exchange’s proposal to remove references to SIG Oil Exploration & Production Index within Options 4A, Section 6(b)(i) and Supplementary Material to Options 4A, Section 12 and to remove a reference to the SIG Oil Exploration & Production Index within Supplementary Material to Options 4A, Section 12 is consistent with the Act. These listings have not appeared on Phlx for several years.

Technical Amendment

The Exchange’s proposal to add the title, “Supplementary Material to Equity 11, Section 4” within Equity 11, Section 4 and renumber and re-letter rule text are non-substantive and intended solely to make the rule easier to read.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Bid/Ask Differentials for Long-Term Options Series

The Exchange’s proposal to amend Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange’s proposal will centralize the bid/ask differentials within Options 2, Section 4(c)(1)(A) and add a sentence to Options 4, Section 8(a), Options 4A, Section 12(b)(2) and Options 4C, Section 5(a)(1)(C) that cites to Options 2, Section 4(c)(1)(A) for information on bid/ask differentials for the various products.

Obsolete Listings

The Exchange’s proposal to remove references to SIG Oil Exploration & Production Index within Options 4A, Section 6(b)(i) and Supplementary Material to Options 4A, Section 12 and

to remove a reference to the SIG Oil Exploration & Production Index within Supplementary Material to Options 4A, Section 12 does not impose an undue burden on competition. These listings have not appeared on Phlx for several years.

Technical Amendment

The Exchange’s proposal to add the title, “Supplementary Material to Equity 11, Section 4” within Equity 11, Section 4 and renumber and re-letter rule text are non-substantive and intended solely to make the rule easier to read.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and subparagraph (f)(6) of Rule 19b–4 thereunder.⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-28 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-Phlx-2021-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-28 and should be submitted on or before June 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10276 Filed 5-14-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91838; File No. SR-BX-2021-020]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections

May 11, 2021.

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 29, 2021, Nasdaq BX, Inc. ("BX" or "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Rules at Options 3, Section 15, Risk Protections, to describe Size Limitation and note its application to Opening Only Orders and Immediate-or-Cancel Orders within Options 3, Section 7(b)(1) and (2), respectively. Also, technical changes are proposed within Options 3, Section 7(e)(1)(B) which describes the Specialized Quote Feed or "SQF".³ Each change is described below.

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) to describe within its rules a current limitation that exists today as to number of contracts an incoming order or quote may specify. Specifically, the maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.⁴ Today, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") describe this limitation within those rules at Options 3, Section 15(a)(2)(B). BX proposes to similarly describe this limitation in its rules.

The Exchange also proposes to amend Options 3, Section 7(b)(1) which describes an Opening Only or "OPG" order. Today, an OPG order can only be executed in the Opening Process pursuant to Options 3, Section 8. The rule currently states that this order type is not subject to any protections listed

³ SQF is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) Options symbol directory messages (e.g., underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively. See Options 3, Section 7(e)(1)(B).

⁴ The Exchange will propose a similar rule change to Nasdaq Phlx LLC and The Nasdaq Stock Market LLC.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

in Options 3, Section 15 describing risk protections. With the proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange proposes to note within Options 3, Section 7(b)(1) that OPG orders are subject to Size Limitation. OPG orders are entered during the Opening Process utilizing “Financial Information eXchange” or “FIX”.⁵

Similarly, the Exchange proposes to amend Options 3, Section 7(b)(2) which describes an Immediate-or-Cancel Order or “IOC” order. Today, the Exchange describes an IOC order as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.⁶ Options 3, Section 7(b)(2)(B) provides that IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker or a Lead Market Maker⁷ through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2) respectively. With the proposed addition of the Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that the Size Limitation does not apply to IOC orders entered through SQF.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol which also permits BX Options Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Size Limitation on SQF orders as it did for FIX because BX Options Market Makers only utilize SQF to enter IOC orders and BX Options Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who may not have their own risk settings, unlike BX Options Market Makers.

BX Options Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is

vital for BX Options Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. BX Options Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange, BX Options Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a BX Options Market Maker’s erroneous order from being entered. The Exchange believes that BX Options Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange believes that allowing BX Options Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, BX Options Market Makers provide liquidity to the market place and have obligations.⁸ Thus, the Exchange opted to not offer Order Price Protection, Market Order Spread Protection, and Size Limitation for IOC orders entered through SQF because BX Options Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk.

Other Non-Substantive Amendments

The Exchange proposes to amend the description of a Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word “request” and also add an “.” after an *e.g.*, to conform the punctuation in the paragraph.

The Exchange also proposes to remove the final sentence of Options 3, Section 7(e)(1)(B) that states, “Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively.” This sentence is duplicative of information contained within Options 3, Section 7(b)(2)(B), which the Exchange is amending in this proposal. The Exchange proposes to remove the final sentence of Options 3, Section 7(e)(1)(B)

as the information is contained elsewhere.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 15

The Exchange’s proposal to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) is consistent with the Act. The proposed amendment is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. Specifically, the maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.¹¹ Today, ISE, GEMX and MRX describe this limitation within those rules at Options 3, Section 15(a)(2)(B). BX proposes to similarly describe this limitation in its rules.

The Exchange’s proposal to amend Options 3, Section 7(b)(1) to make clear that Size Limitation applies to OPG orders is consistent with the Act as this rule text will clarify the existing language and make clear that Size Limitation is applicable to this order type. OPG orders are entered during the Opening Process utilizing FIX.

The Exchange’s proposal to amend Options 3, Section 7 with respect to IOC orders is consistent with the Act. Today, the Exchange describes an IOC Order as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.¹² BX Options 3, Section 7(b)(2)(B) provides that IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a BX Options Market Maker through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2) respectively. With the proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that the Size Limitation does not apply to IOC orders entered through

⁵ FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Options 3, Section 7(e)(1)(A).

⁶ See BX Options 3, Section 7(b)(2). The Exchange also notes that IOC orders entered with a TIF of IOC are not eligible for routing.

⁷ The Exchange proposes to utilize the word “BX Options Market Maker” to collectively refer to Lead Market Makers and Market Makers throughout the remainder of this rule change.

⁸ BX Options Market Makers have intra-day quoting obligations as specified in Options 2, Section 5.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See *supra* note 4.

¹² See BX Options 3, Section 7(b)(2).

SQF. The Exchange notes these exceptions within this rule to make clear that this information is available to market participants within the description of an IOC.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol which also permits BX Options Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Size Limitation on SQF orders as it did for FIX because BX Options Market Makers only utilize SQF to enter IOC orders and BX Options Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who unlike BX Options Market Makers may not have their own risk settings. BX Options Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is vital for BX Options Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. BX Options Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange. BX Options Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a BX Options Market Maker's erroneous order from being entered. The Exchange believes that BX Options Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange believes that allowing BX Options Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, BX Options Market Makers provide liquidity to the market place and have obligations.¹³ The Exchange believes not offering Size Limitation for IOC orders entered through SQF is consistent with the Act because BX Options Market Makers have more sophisticated infrastructures than other

market participants and are able to manage their risk.

Other Non-Substantive Amendments

The Exchange's proposal to amend the description of Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word "request" and also add an ".,," after an *e.g.*, to conform the punctuation in the paragraph is consistent with the Act. These amendments are non-substantive.

The Exchange's proposal to remove the final sentence of Options 3, Section 7(e)(1)(B) that states, "Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively" is consistent with the Act. This sentence is duplicative of information contained within Options 3, Section 7(b)(2)(B), which the Exchange is amending in this proposal. The Exchange proposes to remove the final sentence of Options 3, Section 7(e)(1)(B) as the information is contained elsewhere.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) does not impose an undue burden on competition. The proposed amendment is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. This System limitation is the same on all Nasdaq affiliated exchanges.¹⁴ Today, ISE, GEMX and MRX describe this limitation within its rules at Options 3, Section 15(a)(2)(B). BX proposes to similarly describe this limitation in its rules.

The Exchange's proposal to amend Options 3, Section 7(b)(1) to make clear that Size Limitation applies to OPG orders does not impose an undue burden on competition as this rule text will clarify the existing language and make clear that Size Limitation is applicable to this order type. OPG orders are entered during the Opening Process utilizing FIX.

The Exchange's proposal to amend Options 3, Section 7 with respect to IOC orders does not impose an undue burden on competition. With the

proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that the Size Limitation does not apply to IOC orders entered through SQF. Unlike other market participants, BX Options Market Makers provide liquidity to the market place and have obligations.¹⁵

Other Non-Substantive Amendments

The Exchange's proposal to amend the description of Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word "request" and also add an ".,," after an *e.g.*, to conform the punctuation in the paragraph does not impose an undue burden on competition. These amendments are non-substantive.

The Exchange's proposal to remove the final sentence of Options 3, Section 7(e)(1)(B) that states, "Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively" does not impose an undue burden on competition. This sentence is duplicative of information contained within Options 3, Section 7(b)(2)(B), which the Exchange is amending in this proposal. The Exchange proposes to remove the final sentence of Options 3, Section 7(e)(1)(B) as the information is contained elsewhere.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷

¹⁵ See *supra* note 8.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ See *supra* note 8.

¹⁴ See *supra* note 4.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that other exchanges have substantively similar rules regarding size limitation for certain incoming orders or quotes.¹⁸ In addition, the non-substantive amendments will correct typographical errors and remove duplicative text, which will bring greater clarity to BX's rules. Thus, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates this proposal operative upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2021-020 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2021-020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2021-020 and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10273 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91841; File No. SR-NASDAQ-2021-030]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Options Market LLC Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections

May 11, 2021.

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 28, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "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 Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC ("NOM") Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 NOM's Rules at Options 3, Section 15, Risk Protections, to describe Size Limitation. The Exchange also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols, to: (1) Remove the One-Cancels-the-Other Order; (2) indicate the risk protections that are applicable to On the Open Orders and Immediate or Cancel orders; and (3) remove references to an outdated OTTO protocol; and (4) make technical corrections. The Exchange also proposes to update a rule citation within General 1, Section 1, Definitions, and add and reserve certain sections within the Equity Rules. Each change is described below.

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) to describe within its rules a current limitation that exists today as to the number of contracts an incoming order or quote may specify. Specifically, the maximum number of contracts, which shall not be

¹⁸ See ISE, GEMX and MRX rules at Options 3, Section 15(a)(2)(B).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

less than 10,000, is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.³ Today, Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) describe this limitation within those rules at Options 3, Section 15(a)(2)(B). NOM proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols, to (1) remove the “One-Cancels-the-Other Order” order type; (2) indicate the risk protections that are applicable to On the Open Orders or “OPG” orders and Immediate or Cancel orders; (3) remove references to an outdated OTTO protocol; and (4) make technical corrections.

The Exchange proposes to remove the “One-Cancels-the-Other Order” currently located within Options 3, Section 7(a)(8). A One-Cancels-the-Other Order is an order entered by a Market Maker that consists of a buy order and a sell order treated as a unit; the full execution of one of the orders causes the other to be canceled. This order type was adopted in 2011⁴ and was to be implemented on or about August 1, 2011 by issuance of an Option Trader Alert as part of a larger implementation related to a technology migration.⁵ The One-Cancels-the-Other Order was never implemented on NOM as part of that migration. No Participant was able to utilize this order type as it was not available on NOM’s System. The Exchange proposes to remove the order type at this time. The order type was intended to permit Market Makers to submit a two-sided order consisting of both a bid and an offer. Today, Market Makers may submit two-sided quotes utilizing NOM’s Specialized Quote Feed or “SQF”⁶ quoting protocol.

³ The Exchange will propose a similar rule change to Nasdaq Phlx LLC (“Phlx”) and Nasdaq BX, Inc. (“BX”).

⁴ See Securities Exchange Act Release No. 64406 (May 4, 2011), 76 FR 27134 (May 10, 2011) (SR–NASDAQ–2011–065) (The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Two-Sided Order for NOM Market Makers).

⁵ *Id.*

⁶ SQF is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) Options symbol directory messages (e.g., underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and

The Exchange would file a rule change with the Commission if it decides to offer this order type in the future. The Exchange proposes to renumber current Options 3, Section 7(a)(9) and (10) new Options 3, Section 7(a)(8) and (9).

The Exchange proposes to amend Options 3, Section 7(b)(1) which describes an On the Open Order or “OPG” order. Today, an OPG order can only be executed in the Opening Cross pursuant to Options 3, Section 8. Further, if after entry into the System, the order is not fully executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant. OPG orders may not route. OPG orders are entered during the Opening Cross utilizing “Financial Information eXchange” or “FIX”.⁷ OPG orders are currently not subject to any protections listed in Options 3, Section 15 describing risk protections, except Size Limitation.⁸ Options 3, Section 7(b)(1) is currently silent on the application of risk protections. At this time, the Exchange proposes to state that this order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. With the proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange proposes to note in the proposed new text within Options 3, Section 7(b)(1) that OPG orders are subject to Size Limitation. The Exchange notes that the Opening Cross itself has boundaries within which orders will be executed.⁹ Also, any participant may enter an Opening Only Order. Typically Market Makers submit Valid Width NBBOs, as provided for within Options 3, Section 8, during the Opening Cross. Nasdaq BX’s OPG Orders are also not subject to any risk protections aside from Size Limitation.¹⁰

resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively.

⁷ FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Options 3, Section 7(e)(1)(A).

⁸ See Options 3, Section 7(b)(1).

⁹ See Options 3, Section 8(b).

¹⁰ See BX Options 3, Section 7(b)(1) which currently provides that an OPG order is not subject to any protections listed in Options 3, Section 15.

The Exchange proposes to amend Options 3, Section 7(b)(2) which describes an Immediate-or-Cancel Order or “IOC” order. Today, the Exchange describes an IOC order as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled and/or routed pursuant to the Participant’s instruction.¹¹ The rule text currently also provides that “IOC orders may be entered through FIX, OTTO or SQF; IOC Orders entered through OTTO or SQF may not route.” The Exchange previously filed to remove its “Ouch to Trade Options” or “OTTO” protocol from its rules.¹² The citations to OTTO within Options 3, Section 7 were inadvertently not removed. At this time, the Exchange proposes to remove those remaining references to OTTO within Options 3, Section 7 from the descriptions of IOC orders and DAY orders.¹³

The Exchange also proposes to note, similar to Phlx and BX, that an IOC order entered by a Market Maker through Specialized Quote Feed or “SQF”¹⁴ is not subject to certain risk protections noted within Options 3, Section 15. Today, an IOC order entered through SQF is not subject to the Order Price Protection or Market Order Spread Protections noted within Options 3, Section 15(a)(1) and (a)(2), respectively. Further, with the addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that SQF orders are not subject to Size Limitation. The addition of this rule text will bring greater clarity to the order type.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol which also permits Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Order Price Protection, Market Order Spread Protection, and Size Limitation on SQF orders, as it did for FIX, because Market Makers only utilize SQF to enter IOC orders and Market Makers are professional traders with their own risk

The Exchange is in the process of filing a rule change to indicate that BX OPG orders are subject to Size Limitation. See also SR–BX–2021–020.

¹¹ See NOM Options 3, Section 7(b)(2).

¹² See Securities Exchange Act Release No. 84084 (December 17, 2020), 85 FR 84084 (December 23, 2020) (SR–NASDAQ–2020–089) (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change To No Longer Implement the OTTO Protocol”).

¹³ “DAY” is an order entered with a TIF of “Day” that expires at the end of the day on which it was entered, if not executed. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX. See proposed Options 3, Section 7(b)(3).

¹⁴ See *supra* note 6.

settings. FIX, on the other hand, is utilized by all market participants who may not have their own risk settings, unlike Market Makers.

Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is vital for Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange, Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker's erroneous order from being entered. The Exchange believes that Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange believes that allowing Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, Market Makers provide liquidity to the market place and have obligations.¹⁵ Thus, the Exchange opted to not offer Order Price Protection, Market Order Spread Protection, and Size Limitation for IOC orders entered through SQF because Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk.

The Exchange proposes to amend the description of Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word "request" and also add an ",," after an e.g to conform the punctuation in the paragraph.

General 1, Section 1

The Exchange proposes to update a rule citation within General 1, Section 1 to Options 3, Section 20. The rule text currently cites Options 3, Section 4, but that citation was incorrectly updated in a prior rule change.¹⁶ The original

citation was to Chapter V, Section 6, Nullification and Adjustment of Options Transactions including Obvious Errors. This rule was relocated to Options 3, Section 20 within that Relocation Rule Change.

Equity Rules

Nasdaq proposes to amend the Rulebook shell to add a new Equity 3A and Equity 8A and reserve those sections. Equity 3A will be utilized by BX Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.¹⁷ Equity 8A is utilized by Nasdaq Phlx within its Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.¹⁸ Also, Nasdaq proposes to add Sections 15–23 within Equity 9 and reserve those sections to harmonize the numbering of Nasdaq equity rules across its affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) is consistent with the Act. The proposed amendment is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. Specifically, the maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.²¹ Today, ISE, GEMX and MRX describe this limitation within those rules at Options 3, Section

15(a)(2)(B). NOM proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange's proposal to remove the "One-Cancels-the-Other Order" currently located within Options 3, Section 7(a)(8) is consistent with the Act. This order type was adopted in 2011²² and was to be implemented on or about August 1, 2011 by issuance of an Option Trader Alert as part of a larger implementation related to a technology migration,²³ however, the new order type was never implemented on NOM as part of that migration. No Participant was able to utilize this order type on NOM's System to date. The Exchange's proposal to remove the order type protects investors and the public interest by making clear that the order type is not available. Further, the order type was intended to permit Market Makers to submit a two-sided order consisting of both a bid and an offer. Today, Market Makers may submit two-sided quotes utilizing NOMs SQF²⁴ quoting protocol.

The Exchange's proposal to amend OPG orders within Options 3, Section 7(b)(1) to make clear that OPG orders are currently not subject to any protections listed in Options 3, Section 15 describing risk protections,²⁵ except Size Limitation is consistent with the Act and will bring greater clarity to the order type. Options 3, Section 7(b)(1) is currently silent on the application of risk protections. Today, OPG orders are not subject to any protections listed in Options 3, Section 15, except Size Limitation. With the proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange proposes to note in the proposed new text within Options 3, Section 7(b)(1) that OPG orders are subject to Size Limitation. The Exchange believes that it is consistent with the Act to not apply any risk protections during the Opening Cross as the Opening Cross itself has boundaries within which orders will be executed.²⁶ Any participant may enter an Opening Only Order. Typically Market Makers submit Valid Width NBBOs, as provided for within Options 3, Section 8, during the Opening Cross. Nasdaq BX's OPG Orders are also not subject to any risk protections aside from Size Limitation.²⁷

2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) ("Relocation Rule Change").

¹⁷ BX will file a proposed rule change to add and reserve Equity 3A.

¹⁸ See Phlx Equity 8A Unlisted Trading Privileges; Proxy and Other Rules.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See *supra* note 3.

²² See *supra* note 4.

²³ *Id.*

²⁴ See *supra* note 6.

²⁵ See Options 3, Section 7(b)(1).

²⁶ See Options 3, Section 8(b).

²⁷ See *supra* note 10.

¹⁵ Market Makers have intra-day quoting obligations as specified in Options 2, Section 5.

¹⁶ See Securities Exchange Act Release No. 87779 (December 17, 2019), 84 FR 70590 (December 23,

The Exchange's proposal to amend Options 3, Section 7(b)(2) and (b)(3), which describes IOC orders and DAY orders, to remove outdated citations to OTTO within Options 3, Section 7 that were inadvertently not removed is consistent with the Act. These amendments are non-substantive and will add clarity to these rules.

The Exchange's proposal to note, similar to Phlx and BX, that an IOC order entered by a Market Maker through SQF is not subject to certain risk protections noted within Options 3, Section 15 is consistent with the Act. Today, an IOC order entered through SQF is not subject to the Order Price Protection or Market Order Spread Protections noted within Options 3, Section 15(a)(1) and (a)(2), respectively. Further, with the addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that SQF orders are not subject to Size Limitation. The addition of this rule text will bring greater clarity to the order type.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol which also permits Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Order Price Protection, Market Order Spread Protection, and Size Limitation on SQF orders, as it did for FIX, because Market Makers only utilize SQF to enter IOC orders and Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who may not have their own risk settings, unlike Market Makers.

Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is vital for Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange, Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker's erroneous order from being entered. The Exchange believes that Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting

obligations the Exchange imposes on these participants.

The Exchange believes that allowing Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, Market Makers provide liquidity to the market place and have obligations.²⁸ The Exchange believes not offering Order Price Protection, Market Order Spread Protection, and Size Limitation for IOC orders entered through SQF is consistent with the Act because Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk.

Finally, the Exchange's proposal to amend the description of Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word "request" and also add an " ." after an e.g to conform the punctuation in the paragraph is consistent with the Act. These changes are non-substantive.

General 1, Section 1

The Exchange's proposal to update an incorrect rule citation within General 1, Section 1 to Options 3, Section 20 is consistent with the Act. The rule text currently cites Options 3, Section 4, but that citation was incorrectly updated in a prior rule change.²⁹ The original citation was to Chapter V, Section 6, Nullification and Adjustment of Options Transactions including Obvious Errors. This rule was relocated to Options 3, Section 20 within that Relocation Rule Change. This amendment will bring clarity to this rule.

Equity Rules

Nasdaq's proposal to amend the Rulebook shell to add a new Equity 3A and Equity 8A and reserve those sections is consistent with the Act. Equity 3A will be utilized by the BX Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.³⁰ Equity 8A is utilized by Phlx within its Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.³¹ Also, Nasdaq proposes to add Sections 15–23

within Equity 9 and reserve those sections to harmonize the numbering of Nasdaq equity rules across its affiliated markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to add a new section (b)(2) does not impose an undue burden on competition. The proposed amendment is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. This System limitation is the same on all Nasdaq affiliated exchanges.³² Today, ISE, GEMX and MRX describe this limitation within its rules at Options 3, Section 15(a)(2)(B). NOM proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange's proposal to remove the "One-Cancels-the-Other Order" currently located within Options 3, Section 7(a)(8) does not impose an undue burden on competition. No Participant was able to utilize this order type on NOM's System to date. The Exchange's proposal to remove the order type will make clear that the order type is not available. Further, the order type was intended to permit Market Makers to submit a two-sided order consisting of both a bid and an offer. Today, Market Makers may submit two-sided quotes utilizing NOM's SQF³³ quoting protocol.

The Exchange's proposal to amend Options 3, Section 7(b)(1) to make clear that Size Limitation applies to OPG orders and the remainder of the risk protections noted within Options 3, Section 15 do not apply to OPG orders does not impose an undue burden on competition. The proposed rule text will clarify the manner in which risk protections interact with this order type. The Opening Cross itself has boundaries within which orders will be executed. Any participant may enter an Opening Only Order. Typically Market Makers submit Valid Width NBOs, as provided for within Options 3, Section 8, during the Opening Cross.

The Exchange's proposal to amend Options 3, Section 7(b)(2) and (b)(3),

²⁸ See *supra* note 15.

²⁹ See *supra* note 16.

³⁰ See *supra* note 17.

³¹ See Phlx Equity 8A Unlisted Trading Privileges; Proxy and Other Rules.

³² See *supra* note 3.

³³ See *supra* note 6.

which describes IOC orders and DAY orders, to remove outdated citations to OTTO within Options 3, Section 7 that were inadvertently not removed does not impose an undue burden on competition. These amendments are non-substantive and will add clarity to these rules.

The Exchange's proposal to note, similar to Phlx and BX, that an IOC order entered by a Market Maker through SQF is not subject to certain risk protections noted within Options 3, Section 15 does not impose an undue burden on competition. Today, an IOC order entered through SQF is not subject to the Order Price Protection or Market Order Spread Protections noted within Options 3, Section 15(a)(1) and (a)(2), respectively. Further, with the addition of Size Limitation to proposed new Options 3, Section 15(b)(2), the Exchange also proposes to note that SQF orders are not subject to Size Limitation. The addition of this rule text will bring greater clarity to the order type.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol which also permits Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Order Price Protection, Market Order Spread Protection, and Size Limitation on SQF orders, as it did for FIX, because Market Makers only utilize SQF to enter IOC orders and Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who may not have their own risk settings, unlike Market Makers.

The Exchange believes that Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants. Further, unlike other market participants, Market Makers provide liquidity to the market place and have obligations.³⁴

Finally, the Exchange's proposal to amend the description of Specialized Quote Feed within Options 3, Section 7(e)(1)(B) to make plural the word "request" and also add an "," after an e.g. to conform the punctuation in the paragraph does not impose an undue burden on competition. These changes are non-substantive.

³⁴ See *supra* note 15.

General 1, Section 1

The Exchange's proposal to update an incorrect rule citation within General 1, Section 1 to Options 3, Section 20 does not impose an undue burden on competition. The rule text currently cites Options 3, Section 4, but that citation was incorrectly updated in a prior rule change.³⁵ The original citation was to Chapter V, Section 6, Nullification and Adjustment of Options Transactions including Obvious Errors. This rule was relocated to Options 3, Section 20 within that Relocation Rule Change. This amendment will bring clarity to this rule.

Equity Rules

Nasdaq's proposal to amend the Rulebook shell to add a new Equity 3A and Equity 8A and reserve those sections does not impose an undue burden on competition. Equity 3A will be utilized by the BX Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.³⁶ Equity 8A is utilized by Phlx within its Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Nasdaq equity market.³⁷ Also, Nasdaq proposes to add Sections 15–23 within Equity 9 and reserve those sections to harmonize the numbering of Nasdaq equity rules across its affiliated markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act³⁸ and subparagraph (f)(6) of Rule 19b–4 thereunder.³⁹

³⁵ See *supra* note 16.

³⁶ See *supra* note 17.

³⁷ See Phlx Equity 8A Unlisted Trading Privileges; Proxy and Other Rules.

³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that other exchanges have substantively similar rules regarding size limitation for certain incoming orders or quotes.⁴⁰ In addition, removing references to an order type and protocol that are not available on the Exchange will bring greater clarity to NOM's rules, as will the non-substantive amendments, which correct typographical errors, remove duplicative text, and align the Exchange's rulebook numbering with that of an affiliated exchange. Thus, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates this proposed operative upon filing.⁴¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2021–030 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–NASDAQ–2021–030. This file number should be included on the subject line if email is used. To help the Commission process and review your

prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴⁰ See ISE, GEMX and MRX rules at Options 3, Section 15(a)(2)(B).

⁴¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-030 and should be submitted on or before June 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-10274 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, May 20, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims; and
Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: May 13, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-10457 Filed 5-13-21; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-305, OMB Control No. 3235-0346]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:
Rule 34b-1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 34b-1 under the Investment Company Act (17 CFR 270.34b-1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b-1 deems to be materially misleading any investment company ("fund") sales literature required to be filed with the Securities and Exchange Commission ("Commission") by Section 24(b) of the Investment Company Act (15 U.S.C. 80a-24(b)) that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among funds.

The Commission estimates that on average approximately 351 respondents file 7,362¹ responses that include the information required by rule 34b-1 each year. The burden resulting from the collection of information requirements of rule 34b-1 is estimated to be 6 hours per response. The total hourly burden for rule 34b-1 is approximately 46,278 hours per year in the aggregate.²

The collection of information under rule 34b-1 is mandatory. The information provided under rule 34b-1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

¹ The estimated number of responses to rule 34b-1 is composed of 7362 responses filed with FINRA and 351 responses filed with the Commission in 2019.

² 7713 responses × 6 hours per response = 46,278 hours.

⁴² 17 CFR 200.30-3(a)(12).

Dated: May 12, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-10319 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.
34270; File No. 812-15119-01]

Delaware Wilshire Private Markets Master Fund, et al.; Notice of Application

May 12, 2021.

AGENCY: Securities and Exchange
Commission (“Commission”).

ACTION: Notice.

SUMMARY OF APPLICATION : Notice of an application for an order under section 17(d) of the Investment Company Act of 1940 (the “Act”) and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d-1 under the Act. Applicants request an order to permit certain closed-end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

APPLICANTS : Delaware Wilshire Private Markets Master Fund (“Master Fund”); Delaware Wilshire Private Markets Fund (“Feeder Fund A”); Delaware Wilshire Private Markets Tender Fund (“Feeder Fund T”); Delaware Management Company, a series of Macquarie Investment Management Business Trust (“Macquarie”, on behalf of itself and its successors¹); Wilshire Advisors LLC (“Wilshire”, on behalf of itself and its successors); BVK Europe Opportunities Fund I, L.P.; BVK Europe Opportunities Fund II, L.P.; BVK Europe Opportunities Fund III, L.P.; Summit Hill Credit Fund, L.P.; Summit Hill Real Assets Fund, L.P.; Wilshire BVV Europe Venture Fund, L.P. (Series I); Wilshire BVV Europe, L.P. (Series I); Wilshire BVV Europe, L.P. (Series II); Wilshire BVV Europe, L.P. (Series III); Wilshire BVV Europe, L.P. (Series IV); Wilshire BVV Europe, L.P. (Series V); Wilshire BVV U.S., L.P. (Series I); Wilshire BVV U.S., L.P. (Series II); Wilshire BVV U.S., L.P. (Series III); Wilshire BVV U.S., L.P. (Series IV); Wilshire BVV U.S., L.P. (Series V); Wilshire BVV U.S., L.P. (Series VI); Wilshire Global Private Markets Fund IX, L.P.; Wilshire New

Waves Fund, L.P.; Wilshire Private Credit Annual Fund Series, L.P.; Wilshire Private Equity Annual Fund Series, L.P.; Wilshire Private Markets Family Office Fund I, L.P.; Wilshire Private Markets Family Office Fund II, L.P.; Wilshire Private Markets Family Office Fund III, L.P.; Wilshire Private Markets Family Office Fund IV, L.P.; Wilshire Private Markets Real Estate Family Office Fund I, L.P. (together with each such entity’s direct and indirect wholly owned subsidiaries, collectively, “Existing Affiliated Funds”).

DATES: The application was filed on April 2, 2020, and amended on November 13, 2020, March 30, 2021 and May 6, 2021.

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 by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request email. Hearing requests should be received by the Commission by 5:30 p.m. on June 7, 2021, 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: Michael Beattie, SEI Investments, *MBeattie@seic.com*, Nick Teunon, Wilshire Advisors LLC, *NTeunon@Wilshire.com*; David Connor, Delaware Management Company, *David.Connor@Macquarie.com*; and Sean Graber, Esq., Morgan, Lewis & Bockius LLP, *sean.graber@morganlewis.com*.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Chief Counsel’s Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants’ Representations

1. Master Fund is a Delaware statutory trust and is a non-diversified, closed-end management investment company registered under the Act. Master Fund’s Objectives and Strategies² are to provide efficient access to the private markets with the goals of offering long-term capital appreciation and current income. Master Fund has a board of trustees, a majority of which is comprised of members who are not “interested persons” within the meaning of section 2(a)(19) of the Act (the “Non-Interested Trustees”). No Non-Interested Trustee will have any direct or indirect financial interest in any Co-Investment Transaction (as defined below) or any interest in any portfolio company, other than indirectly through share ownership (if any) in Master Fund, Feeder Fund A, Feeder Fund T or a Future Regulated Fund (as defined below).

2. Each of Feeder Fund A and Feeder Fund T is a Delaware statutory trust and is a non-diversified, closed-end management investment company registered under the Act. Each of Feeder Fund A’s and Feeder Fund T’s Objectives and Strategies are to provide efficient access to the private markets with the goals of offering long-term capital appreciation and current income by investing substantially all of their assets in the Master Fund. Each of Feeder Fund A and Feeder Fund T has a board of trustees, the majority of which are Non-Interested Trustees. No Non-Interested Trustee will have any direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than indirectly through share ownership (if any) in Feeder Fund A, Feeder Fund T, Master Fund or a Future Regulated Fund.

3. The Existing Affiliated Funds are investment funds each of which would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The investment adviser to the Existing Affiliated Funds is Wilshire.

4. Macquarie is a series of a Delaware statutory trust and registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). Macquarie serves as the investment adviser to the

² “Objectives and Strategies” means, with respect to a Regulated Fund (as defined below), the investment objectives and strategies of such Regulated Fund, as described in such Regulated Fund’s registration statement, other filings the Regulated Fund has made with the Commission under the Act, under the Securities Act of 1933, as amended (“1933 Act”) or under the Securities Exchange Act of 1934, as amended, or in the Regulated Fund’s reports to shareholders.

¹ The term “successor” as applied to each Adviser (as defined below), means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

Existing Regulated Funds³ and has engaged Wilshire to serve as sub-adviser to the Existing Regulated Funds.

5. Wilshire, a California corporation, is an investment adviser registered with the Commission under the Advisers Act. Wilshire identifies investment opportunities and executes on trading strategies for the Existing Regulated Funds subject to investment guidelines agreed to by Macquarie and Wilshire. Macquarie has established guidelines, monitoring and reporting procedures to evaluate the performance of Wilshire but is not responsible for making or ratifying any investment decisions made by Wilshire. Macquarie is not an affiliated person (as defined in Section 2(a)(3) of the Act) of Wilshire.

6. Applicants seek an order (“Order”) to permit one or more Regulated Funds⁴ and/or one or more Affiliated Funds⁵ to participate in the same investment opportunities through a proposed co-investment program (the “Co-Investment Program”), where such participation would otherwise be prohibited under rule 17d–1, by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser

³ “Existing Regulated Funds” means Feeder Fund A, Feeder Fund T and Master Fund.

⁴ “Regulated Fund” means the Existing Regulated Funds and any Future Regulated Fund. “Future Regulated Fund” means any closed-end investment management company (a) that is registered under the Act, (b) whose investment adviser (and any sub-adviser, if any) is a Wilshire Adviser, and (c) that intends to participate in the Co-Investment Program. The term “Macquarie Adviser” means (a) Macquarie and (b) any future investment adviser that controls, is controlled by or is under common control with Macquarie, is registered as an investment adviser under the Advisers Act and is not a Regulated Fund or a subsidiary of a Regulated Fund. The term “Wilshire Adviser” means (a) Wilshire, and (b) any future investment adviser that controls, is controlled by or is under common control with Wilshire, is registered as an investment adviser under the Advisers Act, or is a relying adviser of an investment adviser that is registered under the Advisers Act and that controls, is controlled by or is under common control with Wilshire, and is not a Regulated Fund or a subsidiary of a Regulated Fund. The term “Adviser” means (a) a Macquarie Adviser or (b) a Wilshire Adviser; provided that a Wilshire Adviser serving as a sub-adviser to an Affiliated Fund (defined below) is included in this term only if (i) the investment adviser is a Wilshire Adviser and (ii) such Adviser controls the entity. Applicants state that the Macquarie Advisers will only be subject to conditions 2(c)(iv), 12, 13 and 14 of the application.

⁵ “Affiliated Fund” means the Existing Affiliated Funds, any Future Affiliated Fund and any Wilshire Proprietary Accounts. “Future Affiliated Fund” means any entity (a) whose investment adviser (and any sub-adviser, if any) is a Wilshire Adviser, (b) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program. “Wilshire Proprietary Accounts” means any existing or future direct or indirect, wholly or majority-owned subsidiary of Wilshire, or a Wilshire Adviser, that, from time to time, may hold various financial assets in a principal capacity.

negotiates terms in addition to price;⁶ and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (“Follow-On Investments”). “Co-Investment Transaction” means any transaction in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary (as defined below)) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.⁷

7. Applicants state that Macquarie has delegated responsibility for the Co-Investment Program to Wilshire. Applicants further state that Wilshire has sole responsibility for causing the Regulated Funds and any Affiliated Fund to enter into a Potential Co-Investment Transaction and is responsible for ensuring that the Wilshire Advisers, the Regulated Funds, and any Affiliated Funds comply with the conditions of the application.

8. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.⁸ Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of rule 17d–1. Applicants request that each Wholly-Owned

⁶ The term “private placement transactions” means transactions in which the offer and sale of securities by the issuer are exempt from registration under the 1933 Act.

⁷ All existing entities that currently intend to rely upon the requested Order have been named as Applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

⁸ The term “Wholly-Owned Investment Subsidiary” means an entity (i) that is wholly-owned by the applicable Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and incur debt (which is or would be consolidated with other indebtedness of such Regulated Fund for financial reporting or compliance purposes under the Act) on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund’s board of trustees (“Board”) has the sole authority to make all determinations with respect to the entity’s participation under the conditions of the application; and (iv) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act.

Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Subsidiary’s participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the parent Regulated Fund’s investments and, therefore, no conflicts of interest could arise between a Regulated Fund and its Wholly-Owned Investment Subsidiary. The Regulated Fund’s Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary’s participation in a Co-Investment Transaction, and the Regulated Fund’s Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Fund’s place. If a Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

9. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (“Available Capital”), and other pertinent factors applicable to that Regulated Fund. Each Adviser, as applicable, undertakes to perform these duties consistently for each Regulated Fund, as applicable, regardless of which of them serves as investment adviser for these entities. The participation of a Regulated Fund in a Potential Co-Investment Transaction may only be approved by both a majority of the trustees of the Board who have no financial interest in such transaction, plan or arrangement and a majority of such trustees who are Non-Interested Trustees (a “Required Majority”),⁹ eligible to vote on that Co-Investment Transaction (the “Eligible Trustees”).¹⁰

⁹ “Required Majority” has the meaning provided in Section 57(o) of the Act. The trustees of a Regulated Fund that make up the Required Majority will be determined as if the Regulated Fund were a business development company (“BDC”) subject to Section 57(o).

¹⁰ The term “Eligible Trustees” means the trustees who are eligible to vote under Section 57(o) as if

10. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Regulated Fund's Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the Regulated Fund's Eligible Trustees, and the Required Majority will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

11. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Trustees. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Trustees.

12. Applicants state that if an Adviser or its principals, or any person controlling, controlled by, or under common control with an Adviser or its principals, and any Affiliated Fund (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under condition 14.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint

transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order shall be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Trustees of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Fund's

investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Trustees of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's shareholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or Affiliated Funds; provided that if any other Regulated Funds or Affiliated Funds, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person

of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, any Affiliated Funds or other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,¹¹ a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, an Affiliated Fund or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of

securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7.

(a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:¹²

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8.

(a) If any Affiliated Fund or Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the co-investment transaction of the proposed Follow-On Investment at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Wilshire Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-

¹¹ This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which the Regulated Fund already holds investments.

¹² Any Wilshire Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 7(a)(i) and 8(a)(i).

Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Trustees of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by any other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Trustees may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Trustees will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee¹³ (including break-up or commitment fees but excluding broker's fees contemplated section 17(e) of the Act) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such

Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds, or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreements between such Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-10340 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91843; File No. SR-NASDAQ-2021-039]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend Publication on Certain Proprietary Data Feeds

May 11, 2021.

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 May 4, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "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 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 temporarily suspend publication on certain proprietary data feeds of last sale information on securities that are projected to exceed 98 percent of the maximum allowable value of the feed. The suspension will be effective on May 4, 2021, and will conclude on May 17, 2021, when the maximum allowable value of the feed will be substantially enhanced. The proposed suspension will impact the following data feeds: Nasdaq Last Sale and Nasdaq Last Sale Plus (Equity 7, Section 139), Nasdaq Basic (Equity 7, Section 147), and Nasdaq FilterView (Equity 7, Section 137).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹³ The Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq proposes to temporarily suspend, on an emergency basis, the publication on certain proprietary data feeds of last sale information on securities that are projected to exceed 98 percent of the maximum allowable value of the feed. The suspension will be effective on May 4, 2021, and will conclude on May 17, 2021, when the maximum allowable value of the feed will be substantially enhanced. The proposed suspension will impact the following data feeds: Nasdaq Last Sale and Nasdaq Last Sale Plus (Equity 7, Section 139), Nasdaq Basic (Equity 7, Section 147), and Nasdaq FilterView (Equity 7, Section 137).

The last sale data on the four data feeds listed above is currently written in a 4-byte hexadecimal computer code format, which establishes a maximum allowable value of \$429,496.7926. If the price of a security meets the maximum allowable price, it resets to zero. Nasdaq plans to remove that maximum allowable price on May 17, 2021, by substituting the 4-byte hexadecimal format with an 8-byte hexadecimal format using a long-form trade message, eliminating the possibility that the price of any existing security will reset to zero. Until May 17, however, as a protective safeguard to prevent the dissemination of incorrect data, Nasdaq proposes to suspend reporting of any security that is projected to exceed 98 percent of the maximum allowable value of the feed (\$420,906.856). This is a temporary measure that will have no permanent impact on any of the four data feeds listed above after the upgrade goes into effect on May 17, 2021.

Only one NMS security is projected to exceed 98 percent of the maximum allowable value between May 4 and May 17, 2021, based on intraday price movements observed on May 3, 2021.

The last sale data for any security not published on the Nasdaq proprietary data feeds will be available through the securities information processors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the

objectives of Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to prevent the last sale price for any of the proprietary data feeds listed above from resetting to zero because a security has reached the maximum allowable value of \$429,496.7926. Nasdaq believes that this protective safeguard will prevent the dissemination of incorrect data, and will thereby promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Proposal is a protective safeguard to prevent the dissemination of incorrect data. It will have no impact on intermarket competition (the competition among SROs) because this temporary measure will have no long-term impact on the competition among exchanges in the sale of top-of-book data. It will have no impact on intramarket competition (the competition among exchange customers) because no purchaser of the affected data feeds will be treated any differently than any other purchaser of the affected data feeds.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to avoid disseminating inaccurate last sale information in its proprietary market data feeds without delay, in the event the last sale price for any security reaches the maximum allowable value of \$429,496.7926. According to the Exchange, only one NMS security is projected to be affected by the temporary suspension, which will conclude on May 17, 2021 when the maximum allowable value of the feeds will be substantially enhanced. Moreover, last sale information for any security not published on the Exchange's proprietary market data feeds will be available through the securities information processors. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁹

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.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-039 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-NASDAQ-2021-039. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-039 and should be submitted on or before June 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10278 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91836; File No. SR-BOX-2021-08]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish a Policy Relating to Billing Errors

May 11, 2021.

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 May 6, 2021, BOX Exchange LLC ("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

The Exchange proposes to amend the Fee Schedule on the BOX Options Market LLC ("BOX") facility to establish a policy relating to billing errors. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend its Fee Schedule to establish a provision related to billing errors and fee disputes. More specifically, the Exchange would adopt language in Section VII.B of the BOX Fee Schedule (Fee Disputes) that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Participants and Non-Participants based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.⁵ The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Participant or Non-Participant that submitted a fee dispute to the Exchange.⁶

The purpose of the proposed change is to encourage Participants and Non-Participants to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Participants with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on Non-Participants are sent as monthly

⁵ For example, if the Exchange becomes aware of a transaction fee billing error on April 1, 2021, the Exchange will resolve the error by crediting or debiting Participants based on the fees or rebates that should have been applied to any impacted transactions during January, February and March 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the April 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, April 1, 2021) and thereafter, would be billed correctly.

⁶ The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) calendar days after receipt of a billing invoice will remain in place.

¹⁰ 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).

invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. Requiring that Participants and Non-Participants submit disputes in writing and provide supporting documentation encourages them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Participants or Non-Participants do not dispute an invoice in a timely manner and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and rebates are final after three calendar months also provides both the Exchange and Participants and Non-Participants finality and the ability to close their books after a known period of time.

The Exchange notes that the proposed change is similar to a policy currently in place at another exchange.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.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.

The Exchange believes that providing that all fees and rebates are final after three months (i.e., resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and Participants and Non-Participants have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on billing errors, the Exchange and Participants and Non-Participants would never be able to close their books with any confidence. Furthermore, as noted above, another Exchange similarly considers their fees final after a similar period of time. The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Participants (and Non-Participants that pay Exchange fees) and apply in cases where either the Participant (or Non-Participant) discovers the error or the Exchange discovers the error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change has any impact on competition. The proposed rule change would establish a clear process that would apply equally to all Participants. Additionally, the proposed rule change is similar to rules of another exchange. The Exchange does not believe such proposed changes would impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Participants, the proposal does not impose any burden on competition.

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 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 after the date of the filing, or such shorter time as the Commission may designate, it has

become effective pursuant to 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder. The Exchange believes that the proposal is non-controversial, does not pose an undue burden on competition, and does not raise any novel issues because the proposed change is designed to establish a practice related to billing errors and fee disputes that will apply uniformly to all Participants and Non-Participants and is similar to the billing policy in effect on another national securities exchange.¹³ According to the Exchange, the proposal would allow the Exchange and market participants to consider all fees and rebates final after three calendar months, which in turn would provide both the Exchange and Participants and Non-Participants finality and the ability to close their books after a known period of time.

The Exchange has asked the Commission to waive the 30-day operative delay for this filing, so that the proposed rule change will become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify the BOX Fee Schedule to adopt a provision related to billing errors and fee disputes that is designed to provide clarity and certainty with respect to when Exchange fees and rebates may be considered final. Further, the proposed rule change would allow BOX to adopt a billing policy that is similar in all material respects to provisions currently in effect on other national securities exchanges¹⁴ and therefore does not raise any new or novel regulatory issues. Accordingly, the Commission designates the proposed rule change as operative upon filing.¹⁵

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ See *supra* note 7.

¹⁴ See, e.g., *supra* note 7.

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ See Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-ChoeBZX-2020-094).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2021-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2021-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2021-08 and should be submitted on or before June 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10272 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91845; File No. SR-CboeBZX-2021-014]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Allow Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF To Strike and Publish Multiple Intraday Net Asset Values

May 11, 2021.

On January 22, 2021, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to allow Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF (each a "Fund" and together "the Funds") to strike and publish multiple intraday net asset values. The proposed rule change was published for comment in the **Federal Register** on February 10, 2021.³

On March 24, 2021, 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 No comments on the proposed rule change have been received. The Commission is issuing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91064 (February 4, 2021), 86 FR 8935 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 91398, 86 FR 16650 (March 30, 2021). The Commission designated May 11, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

I. Description of the Proposal

The Commission approved a rule governing the listing and trading of shares ("Shares") of the Funds,⁷ which are Tracking Fund Shares.⁸ The Shares are listed and are trading on the Exchange. The current rule governing the listing and trading of the Shares contemplates that each Fund would calculate and disseminate one net asset value ("NAV") per day.⁹ Each Fund's NAV represents the value of the Fund's assets minus its liabilities divided by the number of shares outstanding.

The Exchange proposes to amend the rule applicable to the listing and trading of the Shares to allow each Fund to calculate and disseminate multiple intraday NAVs. The Exchange states that NAVs, which are used to value exchange-traded products ("ETPs") such as Tracking Fund Shares,¹⁰ are central to the arbitrage process for many ETPs,¹¹ and that arbitrage is important because it provides a means to maintain a close tie between market price and NAV per share of the ETP.¹²

In support of its proposal, the Exchange states that allowing the Funds to strike and publish multiple intraday NAVs would provide the marketplace with additional information related to each Fund's underlying holdings on an intraday basis, which the Exchange believes will allow market participants to better assess their risk and provide additional certainty around intraday price and hedging.¹³ The Exchange also provides that its proposal would reduce the risk that market participants face

⁷ See Securities Exchange Act Release No. 90684 (December 16, 2020) 85 FR 83637 (December 22, 2020) (SR-CboeBZX-2020-091) ("Prior Order"). See also BZX Rule 14.11(m)(2)(A) (requiring the Exchange to file proposals under Section 19(b) of the Act before listing and trading a series of Tracking Fund Shares).

⁸ A "Tracking Fund Share" is a security that: (1) 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; (2) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (3) 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 and/or a cash amount with a value equal to the next determined net asset value; and (4) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See BZX Rule 14.11(m)(3)(A).

⁹ See Prior Order, *supra* note 7, 85 FR at 83638.

¹⁰ See Notice, *supra* note 3, 86 FR at 8935.

¹¹ See *id.* at 8935-8936.

¹² See *id.* at 8936.

¹³ See *id.* at 8936-8937.

intraday related to the possible divergence between the Tracking Basket and the value of each Fund's underlying holdings by permitting market participants to "lock in" their creation and redemption at both intraday NAV and at the end-of day-NAV. The Exchange states that its proposal, by reducing the risk that market participants face intraday, would encourage tighter spreads and deeper liquidity in the Shares, to the benefit of investors.¹⁴

II. Proceedings To Determine Whether To Approve or Disapprove SR–ChoeBZX–2021–014 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁵ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of and input concerning the proposed rule change's consistency with the Act and, in particular, Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."¹⁷

The Commission has not previously approved a proposed rule change under Rule 19b–4 of the Act to permit the listing and trading of any ETP that calculates and disseminates multiple intraday NAVs.¹⁸ The Exchange's

proposal, therefore, raises novel questions and concerns regarding the proposal's impact on how the Shares would trade and whether the proposal is consistent with the requirements of Section 6(b)(5) of the Act, including the requirement that the rules of a national securities exchange be "designed to . . . remove impediments to and perfect the mechanism of a free and open market and a national market system," and promote "the maintenance of fair and orderly markets" consistent with Section 11(A) of the Act. Accordingly, the Commission seeks comments on the novel aspects of the proposal, including the following:

1. As proposed, each Fund would be able to strike and disseminate multiple intraday NAVs. Do commenters have views regarding whether the calculation and dissemination of multiple intraday NAVs would be helpful or confusing to market participants, particularly in light of the other information, including intraday indicative value, which is disseminated regarding the Shares?

2. What effects, if any, would intraday creations and redemptions have on secondary trading and price discovery?

3. The Shares are listed and traded on the Exchange as Tracking Fund Shares. Accordingly, the Funds do not disclose on a daily basis the Funds' full portfolio holdings. Given the lack of full portfolio transparency on a daily basis, what issues, if any, do multiple, intraday NAVs pose? What, if any, benefits do they confer?

4. The proposal does not stipulate the number of intraday NAVs each Fund will strike and does not stipulate when such intraday NAVs would be struck. Do commenters have concerns regarding the lack of fixed number and times of proposed intraday NAVs? If so, what are those concerns?

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."¹⁹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an

affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.²⁰

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.²¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 7, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 21, 2021. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

²⁰ See *id.*

²¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁴ See *id.* at 8937.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ The Exchange notes that its proposal is similar to a functionality offered by Invesco Treasury Collateral ETF. According to the Exchange, that ETF calculates its NAV at 12 p.m. and 4 p.m. ET every day the New York Stock Exchange ("NYSE") is

open. See Notice, *supra* note 3, 86 FR at 8936, n.8. The Commission notes, however, that Invesco Treasury Collateral ETF was not filed with the Commission pursuant to Section 19 of the Act. Accordingly, as it relates the Commission's review under the Rule 19b–4 process, the Exchange's proposal herein is a case of first impression.

¹⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-014 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-2021-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-014 and should be submitted by June 7, 2021. Rebuttal comments should be submitted by June 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-10275 Filed 5-14-21; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16882 and #16883; Oklahoma Disaster Number OK-00145]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-4587-DR), dated 02/24/2021.

Incident: Severe Winter Storms.

Incident Period: 02/08/2021 through 02/20/2021.

DATES: Issued on 05/11/2021.

Physical Loan Application Deadline Date: 05/25/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 11/24/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 02/24/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Muskogee

All Contiguous Counties have been previously declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021-10331 Filed 5-14-21; 8:45 am]

BILLING CODE 8026-03-P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0660]

GC SBIC V, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended ("Act"), under Section 309 of

the Act and 13 CFR Section 107.1900 of the Small Business Administration Rules and Regulations to function as a small business investment company under the Small Business Investment Company License No. 02/02-0660 issued to GC SBIC V, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Thomas G. Morris,

Acting Associate Administrator, Director, Office of Liquidation, Office of Investment and Innovation.

[FR Doc. 2021-10263 Filed 5-14-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

Notice of Intent To Rule on Request To Dispose 5.3 and .8 Acres of Land at Sanford Seacoast Regional Airport, Sanford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Town of Sanford ME, to dispose of 5.3 and .8 acres of land at Sanford Seacoast Regional Airport, Sanford, ME. The land is no longer needed for aviation purposes and may be disposed of by the airport. These parcels are located in non-aeronautical use area and will have no effect on any existing or future aviation development needs. The proceeds from the sale of the two properties will be placed in the airports operating and maintenance account.

DATES: Comments must be received on or before June 16, 2021.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, and follow the instructions on providing comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W 12-140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

²² 17 CFR 200.30-3(a)(57).

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781-238-7618.

SUPPLEMENTARY INFORMATION: The FAA issues this notice under the provisions of 49 U.S.C. 47107(h)(2).

Issued in Burlington, Massachusetts, on May 12, 2021.

Julie Seltam-Wilps,
Deputy Director, Airports Division.

[FR Doc. 2021-10322 Filed 5-14-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2021-0006-N-4]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before July 16, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA 2021-0006. All comments received will be

posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: *hodan.wells@dot.gov* or telephone: (202) 493-0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives:

(1) Reduce reporting burdens; (2) organize information collection requirements in a "user-friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inspection and Maintenance of Steam Locomotives.¹

OMB Control Number: 2130-0505.

Abstract: The Boiler Inspection Act of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original Act was expanded to cover all steam locomotives and tenders, and all their parts and appurtenances. As amended, this Act requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. Currently, the collection of information is used primarily by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA and State rail safety inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed "safe and suitable" for service and are properly operated and maintained.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA-1, FRA-2, FRA-3, FRA-4, FRA-5, and FRA-19.

Respondent Universe: 82 steam locomotive owners/operators.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section ²	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent ³
230.6—Waivers	82 steam owners and operators.	1 waiver letter	1 hour	1.00	\$77.47
230.12—Conditions for movement—Non-complying locomotives.	82 steam owners and operators.	10 tags	6 minutes	1.00	58.40
230.14(b)—31 Service Day Inspection—FRA notification.	82 steam owners and operators.	360 notifications	5 minutes	30.00	2,324.10

¹Previously titled "Inspection and Maintenance of Steam Locomotives (Formerly Steam Locomotive Inspection)."

²The current inventory exhibits a total burden of 18,865 hours while the total burden of this notice

is 1,357 hours. FRA determined some of the estimates were not derived from PRA requirements, thus leading to the increased figures in the current inventory, which were decreased accordingly in this notice. Also, FRA made a few textual edits and corrections on Forms 2 and 5.

³The dollar equivalent cost is derived from the Surface Transportation Board's 2019 Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

CFR section ²	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent ³
—(c) 31 Service Day Inspection—Filing inspection reports—Form 1.	82 steam owners and operators.	360 reports	20 minutes	120.00	9,296.40
230.15—92 Service Day Inspection—Filing inspection report—Form 1.	82 steam owners and operators.	120 reports	20 minutes	40.00	3,098.80
230.16(b)—Annual inspection—FRA notification.	82 steam owners and operators.	120 notifications	5 minutes	10.00	774.70
—(c) Filing inspection report—Form 3	82 steam owners and operators.	120 reports	30 minutes	60.00	4,648.20
230.17—1,472 Service Day Inspection—Form 4.	82 steam owners and operators.	12 forms	30 minutes	6.00	464.82
230.20—Alteration Reports—Boilers—Form 19.	82 steam owners and operators.	5 reports	1 hour	5.00	387.35
230.21—Steam Locomotive Number Change.	82 steam owners and operators.	1 document	2 minutes	0.03	2.32
230.33—Welded Repairs/Alterations ..	82 steam owners and operators.	5 letters	2 hours	10.00	774.70
—Written Request to FRA for Approval—Unstayed surfaces.	82 steam owners and operators.	3 letters	2 hours	6.00	464.82
230.34—Riveted Repairs/Alterations ..	82 steam owners and operators.	2 requests	2 hours	4.00	309.88
230.49—Setting of Safety Relief Valves.	82 steam owners and operators.	5 metal tags	1 hour	5.00	292.00
230.96—Main, Side, and Valve Motion Rods.	82 steam owners and operators.	1 letter	2 hours	2.00	154.94
230.13—Daily Inspection Reports—Form 2.	82 steam owners and operators.	3,650 reports	10 minutes	608.33	47,127.33
230.17—1,472 Service Day Inspection—Form 3.	82 steam owners and operators.	12 reports	15 minutes	3.00	232.41
230.18—Service Day Report: Form 5 ⁴ .	82 steam owners and operators.	150 reports	15 minutes	37.50	2,905.13
230.19—Posting of Copy—Form 1 & 3.	82 steam owners and operators.	4,320 copies of forms ...	5 minutes	360.00	27,889.20
230.41—Flexible Stay Bolts with Caps.	82 steam owners and operators.	20 entries	2 minutes	0.67	39.13
230.46—Badge Plates	82 steam owners and operators.	3 metal stampings	2 hours	6.00	350.40
230.47—Boiler Number	82 steam owners and operators.	1 metal stamping	1 hour	1.00	58.40
230.75—Stenciling Dates of Tests and Cleaning.	82 steam owners and operators.	50 stencils	30 minutes	25.00	1,460.00
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 steam owners and operators.	1 metal stamping	15 minutes	0.25	14.60
230.116—Oil Tanks	82 steam owners and operators.	30 stencils	30 minutes	15.00	876.00
Total ⁵	82 steam owners and operators.	9,362 responses	N/A	1,357	104,082

Total Estimated Annual Responses: 9,362.

Total Estimated Annual Burden: 1,357 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$104,082.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021–10328 Filed 5–14–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2021–0006–N–3]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before July 16, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA 2021–

⁴ FRA made a minor text edit.

⁵ Totals may not add due to rounding.

0006. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Toone, Information Collection Clearance Officer, at email: *Kim.Toone@dot.gov* or telephone: (202) 493-6132.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information

collection activities on the public, including the use of automated collection techniques or other forms of information technology. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a "user-friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Grants Management Requirements for Federal Railroad Administration. Grant Awards and Cooperative Agreements.

OMB Control Number: 2130-0615.

Abstract: This ICR is a revision of a currently approved collection, Grant Management Requirements for Federal Railroad Administration. Specifically, FRA is revising FRA Form 217 Categorical Exclusion Worksheet with this submission. All other forms associated with this collection, which OMB re-approved on January 7, 2021, remain unchanged. The forms for which FRA seeks renewal of its currently approved collection are listed below.

Form(s): All FRA forms (Fs) are located at FRA's public website; all Standard Forms (SFs) are located at *Grants.gov*. The FRA forms are: 30 (FRA Assurance and Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements), 31 (Grant Adjustment Require Form), 32 (Service Outcome Agreement Annual Reporting), 33 (Final Performance Report), 34 (Quarterly Progress Report), 35 (Application Form), 217 (Categorical Exclusion Worksheet), 229 (NIST Manufacturing Extension Partnership Supplier Scouting—FRA Item Opportunity Synopsis), 251 (Applicant Financial Capability Questionnaire), and 252 (Payment Summary Spreadsheet). The SFs are: 270 (Request for Advance or Reimbursement), 424 (Application for Federal Assistance), 424A (Budget Information for Non-Construction Programs), 424B (Assurance for Non-Construction Programs), 424C (Budget Information for Construction Programs), 424D (Assurances for Construction Programs), 425 (Federal Financial Report), and LLL (Disclosure of Lobbying Activities).

Type of Request: Revision of a currently approved collection.

Affected Public: Generally includes States and local governments and railroads.

Frequency of Submission: Varied; on occasion/monthly.

Reporting Burden:

Form name	Form	Grant activity/process	Total annual responses	Average time (hours) per response	Total annual burden hours	Total annual dollar cost equivalent
Grant Application (FRA F 35)	FRA F 35	Application	250	34	8,500.00	\$348,415.00
Application for Federal Assistance (SF 424)	SF 424	Application	250	1.1	275.00	11,272.25
Budget Information for Non-Construction Programs (SF 424A)	SF 424A	Application	75	3	225.00	9,222.75
Assurances for Non-Construction Programs (SF 424B)	SF 424B	Application	75	0.25	18.75	768.56
Budget Information for Construction Programs (SF 424C)	SF 424C	Application	175	3	525.00	21,519.75
Assurances for Construction Programs (SF 424D)	SF 424D	Application	175	0.25	43.75	1,793.31
Disclosure of Lobbying Activities (SF LLL)	SF LLL	Application	250	0.17	42.50	1,742.08
Applicant Financial Capability Questionnaire (FRA F 251)	FRA F 251	Application	168	2	336.00	13,772.64
FRA Assurances and Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements (FRA F 30)	FRA F 30	Application	250	0.25	62.50	2,561.88
Federal Financial Report (125 new awardees submit each quarter; 125 × 4 = 500) (SF 425; new awards)	SF 425	Awards & Maintenance	500	1.5	750.00	30,742.50
Federal Financial Report (216 existing award-ees submit each quarter; 216 × 4 = 864) (SF 425; existing grantees)	SF 425	Awards & Maintenance	864	1.5	1,296.00	53,123.04
Request for Advance or Reimbursement (SF 270)	SF 270	Awards & Maintenance	860	1	860.00	35,251.40
Payment Summary Spreadsheet (FRA F 252)	SF 252	Awards & Maintenance	860	0.5	430.00	17,625.70
Quarterly Progress Report (125 new award-ees submit each quarter; 125 × 4 = 500) (FRA F 34; new awards)	FRA F 34	Awards & Maintenance	500	2	1,000.00	40,990.00

Form name	Form	Grant activity/process	Total annual responses	Average time (hours) per response	Total annual burden hours	Total annual dollar cost equivalent
Quarterly Progress Report (216 existing awardees submit each quarter; 216 × 4 = 864) (FRA F 34; existing grantees).	FRA F 34	Awards & Maintenance	864	2	1,728.00	70,830.72
Grant Adjustment Request Form (FRA F 31)	FRA F 31	Awards & Maintenance	212	1	212.00	8,689.88
Service Outcome Agreement (SOA) Annual Reporting (FRA F 32).	FRA F 32	Awards & Maintenance	24	1	24.00	983.76
Certification of Compliance or Non-Compliance with Buy America Requirements for Steel, Iron, or Manufactured Products being produced by Awardee (narrative request).	n/a	Buy America Component	15	3	45.00	1,844.55
Certification of Compliance with Buy America for Rolling Stock (narrative request).	n/a	Buy America Component	1	62	62.00	2,541.38
Waivers—Requests/Applications for Waivers, excluding FRA F 229 (narrative request).	n/a	Buy America Component	15	80	1,200	49,188.00
NIST Manufacturing Extension Partnership Supplier Scouting—FRA—Item Opportunity Synopsis (FRA F 229).	FRA F 229	Buy America Component	15	18	270.00	11,067.30
Awardee Investigations (including FRA initiated investigations).	n/a	Buy America Component	3	333	999.00	40,949.01
Awardee direct reply to FRA after request to conduct investigation of bidder/offeree (narrative request).	n/a	Buy America Component	2	1	2.00	81.98
Additional Documents to FRA from Awardee/ Investigated Party (narrative request).	n/a	Buy America Component	1	4	4.00	163.96
Transmission of Awardee/Bidder/Offeree Reply to Petitioner (narrative request).	n/a	Buy America Component	2	0.5	1.00	40.99
Awardee/Investigated Bidder/Offeree response to Petitioner Comment (narrative request).	n/a	Buy America Component	1	8	8.00	327.92
Written request to FRA for information bearing on substance of investigation which has been submitted by petitioner, interested parties, or awardees (narrative request).	n/a	Buy America Component	1	4	4.00	163.96
Detailed Statement to FRA Regarding Confidentiality of Previously Submitted Information to Agency (narrative request).	n/a	Buy America Component	1	8	8.00	327.92
Awardee Determination to make award before resolution of investigation one of this sections specified reasons (narrative request).	n/a	Buy America Component	1	40	40.00	1,639.60
Notification to FRA by Awardee to make award during pendency of investigation (narrative request).	n/a	Buy America Component	1	1	1.00	40.99
Request to FRA for Reconsideration of Initial Decision by Party Involved in Investigations (narrative request).	n/a	Buy America Component	1	80	80.00	3,279.20
Pre-Award Audit (narrative request)	n/a	Buy America Component	1	33	33.00	1,352.67
Final Contract between Awardee and Bidder/ Offeree (narrative request).	n/a	Buy America Component	1	16	16.00	655.84
Post Award Audit (narrative request)	n/a	Buy America Component	1	256	256.00	10,493.44
Rolling Stock Domestic Content Improvement Plans (narrative request).	n/a	Buy America Component	1	120	120.00	4,918.80
Categorical Exclusion Worksheet (FRA F 217)	FRA 217	Awards & Maintenance	75	1	75	3,074.25
Final Performance Report (FRA F 33)	FRA 33	Closeout	79	8	632.00	25,905.68
Total			6,570	1,131.02	20,184.50	827,362.66

Total Estimated Annual Responses: 6,570.

Total Estimated Annual Burden: 20,184.50 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$827,362.66.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021–10326 Filed 5–14–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2021–0006–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR)

abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On February 18, 2021, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before June 16, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: Hodan.Wells@dot.gov or telephone: (202) 493-0440, and Mr. John Purnell, Information Collection Clearance Officer at email: John.Purnell@dot.gov or telephone: (202) 493-0500.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On February 18, 2021, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. See 86 FR 10068.

FRA received one comment in response to this 60-day notice from Dr. Dennis J. Fixler, the Chief Economist of the U.S. Department of Commerce’s Bureau of Economic Analysis (BEA). In its March 11, 2021 letter to FRA, the BEA expresses its strong support for this ICR because BEA considers the data collected on FRA’s forms to be crucial to key components of its economic statistics. The BEA uses the data collected to prepare estimates of the employee compensation component of national income and state personal income. The BEA specifically uses employee injury and death data collected on forms FRA F 6180.55 and FRA F 6180.55a, Railroad Injury and Illness Summary, to prepare estimates of workers’ compensation for the railroad industry.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute

its functions, including whether the information will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The railroad accident/incident reporting regulations in 49 CFR part 225 require railroads to submit reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. As the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.54; .55; .55a; .56; .57; .78; .81; .97; .98; .107; .150.

Respondent Universe: 765 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 89,057.

Total Estimated Annual Burden: 35,846 hours.¹

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$2,775,067.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021–10325 Filed 5–14–21; 8:45 am]

BILLING CODE 4910–06-P

¹ When submitting this ICR package in OMB’s database, ROCIS, the total estimated annual burden increases one hour, from 35,845 to 35,846, due to required rounding.

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Schedule of Excess Risks

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Schedule of Excess Risks.

DATES: Written comments should be received on or before July 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Excess Risks.

OMB Number: 1530–0062.

Form Number: FS Form 285–A.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,168 total.

Estimated Time per Respondent: New Applicants—20 hours; Renewals—5 hours.

Estimated Total Annual Burden Hours: 5,800.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the

agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 12, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021-10302 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.:

202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Action

On May 11, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Individuals

1. AKAR, Ezzat Youssef (Arabic: عزت يوسف أكار) (a.k.a. AKAR, Izzat; a.k.a. AKAR, Izzat Youssef; a.k.a. AKKAR, Izzat Yusif), Al-Kyam Hayy al-Sharqi, Marjayun, Al-Nabtiyah, Lebanon; DOB 01 Nov 1967; POB Al-Kiyam, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism", 84 FR 48041 (E.O. 13224, as amended), for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. DAHER, Ibrahim Ali (Arabic: ابراهيم علي ضاهر) (a.k.a. DAHIR, Ibrahim), Serhal Building, 1st Floor, Daccache Street, Haret Hreik, Baabda, Lebanon; Blida, Marjayoun, Nabatiyeh, Lebanon; DOB 04 Jul 1964; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; National ID No. 2562031 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. GHARIB, Abbas Hassan (Arabic: عباس حسن غريب) (a.k.a. "GHARIB, Abbass"), Tayir Harfa, Tyre, South Lebanon, Lebanon; DOB 25 Sep 1969; POB Tayir Harfa, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. HARB, Mustafa Habib (Arabic: مصطفى حبيب حرب) (a.k.a. HARB, Mostafa Habib; a.k.a. HARB, Mustapha), Haruf, al-Nabatiyah, Lebanon; DOB 06 Aug 1973; POB Haruf, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. OTHMAN, Hasan Chehadeh (Arabic: حسن شحاده عثمان) (a.k.a. OTHMAN, Hassan Shehadeh; a.k.a. "UTHMAN, Hassan"), Baalbak, Lebanon; DOB 29 Jun 1979; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; National ID No. 3571577 (Lebanon) (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. SUBAYTI, Wahid Mahmud (Arabic: وحيد محمود سبيتي) (a.k.a. SBAYTI, Wahid; a.k.a. SBEITY, Waheed Mahmoud), Kfar Sir, Nabatieh, Lebanon; DOB 23 Feb 1961; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; National ID No. 473548 (Lebanon) (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. YAZBECK, Ahmad Mohamad (Arabic: احمد محمد يزبك), Kared Al Hassan Building, 1st Floor, Haret Hreik, Baabda, Lebanon; Nahala Baalbek, Baalbek and Hermel, Lebanon; DOB 01 Dec 1971; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: May 11, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-10336 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On May 12, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. GONZALEZ PENUELAS, Ignacio (Latin: GONZÁLEZ PEÑUELAS, Ignacio) (a.k.a. "GONZALEZ PENUELAS, Jose Ignacio"; a.k.a. "NACHO GONZALEZ"), Sinaloa, Mexico; DOB 31 Jul 1972; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. GOPI720731HSLNXG07 (Mexico) (individual) [SDNTK] (Linked To:

GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION). Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

2. GONZALEZ PENUELAS, Jesus (Latin: GONZÁLEZ PEÑUELAS, Jesús) (a.k.a. "EL CHUY GONZALEZ"), Sinaloa, Mexico; DOB 10 Nov 1969; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. GOPJ691110HSLNXS09 (Mexico) (individual) [SDNTK]. Identified as a significant foreign narcotics trafficker pursuant to section 805(b)(1) of the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"), 21 U.S.C. 1904(b)(1).

3. GONZALEZ PENUELAS, Wilfrido (Latin: GONZÁLEZ PEÑUELAS, Wilfrido) (a.k.a. GONZALEZ PENUELAS, Wilfredo) (Latin: GONZÁLEZ PEÑUELAS, Wilfredo)), Avenida Segunda numero 148, del Poblado Gallo de Limones, Guasave, Sinaloa, Mexico; DOB 14 Sep 1977; POB Guasave, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. GOPW770914HSLNXL03 (Mexico) (individual) [SDNTK] (Linked To: GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION). Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

4. MENDIVIL FIGUEROA, Efrain, Sinaloa, Mexico; DOB 01 Feb 1980; POB Guasave, Sinaloa, Mexico; nationality Mexico; Gender Male; R.F.C. MEFE800201L2A (Mexico); C.U.R.P. MEFE800201HSLNGF04 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

5. NUNEZ MOLINA, Adelmo (Latin: NÚÑEZ MOLINA, Adelmo) (a.k.a. FLORES NUNEZ, Adelmo) (Latin: FLORES NÚÑEZ, Adelmo)), Sinaloa, Mexico; DOB 15 Dec 1970; POB Choix, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. NUMA701215HSLXLD02 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or

services in support of, the international narcotics trafficking activities of Jesus GONZALEZ PENUELAS, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

6. PAYAN MERAZ, Juana, Mexico; DOB 08 Mar 1974; POB Badiraguato, Sinaloa, Mexico; nationality Mexico; Gender Female; C.U.R.P. PAMJ740308MSLYRN17 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of Raul PAYAN MERAZ.

7. PAYAN MERAZ, Raul, Mexico; DOB 30 Jun 1975; POB Guasave, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. PAMR750630HSLYRL06 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

Entities

1. CITY PLAZA, SOCIEDAD ANONIMA DE CAPITAL VARIABLE (a.k.a. CITY PLAZA, S.A. DE C.V.), Guasave, Sinaloa, Mexico; Business Registration Document # CUD: A201903242035215924 (Mexico); Folio Mercantil No. N-2019028273 (Mexico) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, a foreign person designated pursuant to the Kingpin Act, Efrain Mendivil Figueroa.

2. GONZALEZ PENUELAS DRUG TRAFFICKING ORGANIZATION (Latin: GONZÁLEZ PEÑUELAS DRUG TRAFFICKING ORGANIZATION), Sinaloa, Mexico [SDNTK]. Identified as a significant foreign narcotics trafficker pursuant to section 805(b)(1) of the Kingpin Act, 21 U.S.C. 1904(b)(1).

Dated: May 12, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-10300 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the name of one person whose property and interests in property has been unblocked and has been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action

On May 12, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is unblocked and has been removed from the SDN List under the relevant sanctions authorities listed below.

Individual

1. ZAMBADA GARCIA, Jesus Reynaldo (a.k.a. "EL REY ZAMBADA"); DOB 13 Aug 1961; POB Culiacan, Sinaloa, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. ZAGJ610813HSLMRS05 (Mexico) (individual) [SDNTK].

Dated: May 12, 2021.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-10305 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Markets Tax Credit (NMTC) Program Application

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in

accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before June 16, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions Fund (CDFI Fund)

Title: New Markets Tax Credit (NMTC) Program Application.

OMB Control Number: 1559-0016.

Type of Review: Reinstatement of a previously approved collection.

Description: The Department of the Treasury, through the Community Development Financial Institutions (CDFI) Fund, Internal Revenue Service, and Office of Tax Policy, administers the NMTC Program. In order to claim the NMTC, taxpayers make Qualified Equity Investments (QEIs) in Community Development Entities (CDEs) and substantially all of the QEI proceeds must, in turn, be used by the CDE to provide investments in businesses in low-income communities and other purposes authorized under the statute.

The CDFI Fund collects data from prospective NMTC Program applicants once per allocation round by means of an online NMTC Program Allocation Application (hereby, the Application or Applications). As required by the Paperwork Reduction Act (PRA), the CDFI Fund invited the general public and other federal agencies to comment on the proposed and/or continuing information collection for the calendar year (CY) 2021-2023 allocation rounds. In response to the request for comment, the CDFI Fund received 214 unique comments from 43 organizations. The NMTC Program Application was updated based upon the CDFI Fund's review and adjudication of the public comments.

Most changes were made to provide more clarity to intended users. The information collected will be used to select awardees, based on a merit-based selection process. The requested information is required by the NMTC Program Authorization (26 CFR 1.45D-1) and respective Notice of Allocation Availability.

Form: NMTC Allocation Application.

Affected Public: Businesses or other for-profits, Not-for-profit Institutions; State, Local or Tribal Governments.

Estimated Number of Respondents: 209.

Frequency of Response: Annual, On occasion.

Estimated Total Number of Annual Responses: 209.

Estimated Time per Response: Varies from 294 to 312 hours on average.

Estimated Total Annual Burden Hours: 64,614.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 12, 2021.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2021-10317 Filed 5-14-21; 8:45 am]

BILLING CODE 4810-70-P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meeting

TIME AND DATE: May 20, 2021, 12 p.m. to 2 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1-929-205-6099 (US Toll) or 1-669-900-6833 (US Toll) or (ii) 1-877-853-5247 (US Toll Free) or 1-888-788-0099 (US Toll Free), Meeting ID: 974 4919 4997, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is <https://kellen.zoom.us/j/97449194997>.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Finance Subcommittee (the "Subcommittee") will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

- I. Call to Order—Subcommittee Chair
The Subcommittee Chair will welcome attendees, call the meeting

- to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.
- II. Verification of Publication of Meeting Notice—UCR Executive Director
The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.
- III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair
For Discussion and Possible Subcommittee Action
The Agenda will be reviewed, and the Subcommittee will consider adoption.
Ground Rules
➤ Subcommittee action only to be taken in designated areas on agenda.
- IV. Review and Approval of Subcommittee Minutes from the March 25, 2021 Meeting—Subcommittee Chair
For Discussion and Possible Subcommittee Action
Draft minutes from the March 25, 2021 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.
- V. MCS-150 Retreat Audit Program—Subcommittee Chair and DSL Transportation
The Subcommittee Chair and DSL Transportation will lead a discussion regarding the MCS-150 retreat audit program provided by the UCR Plan and the progress made with participating states. States may opt into the program. States that opt in will remain engaged in the audit process but may have a lesser burden of having to attend to unresponsive/unproductive retreat audits.
- VI. Non-Participating States Unregistered Solicitation Campaign—Subcommittee Chair and DSL Transportation
The Subcommittee Chair and DSL Transportation will lead a discussion regarding the non-participating states unregistered solicitation campaign and the option to hire a contractor to perform this service.
- VII. 2020 State UCR Audit Reports—Subcommittee Chair
The Subcommittee Chair will lead a discussion regarding the states upcoming obligations regarding 2020 audit reports and issue a reminder that the 2020 UCR state annual audit reports have been subject to UCR review starting on April 1, 2021.
- VIII. 2020 and 2021 State UCR Registration Percentages—Subcommittee Chair and Vice Chair
The Subcommittee Chair and Vice Chair will lead a discussion regarding the national and states registration percentages and ways to increase the percentages.
- IX. 2021 Inspection Audits—Subcommittee Chair and Vice Chair
For Discussion and Possible Subcommittee Action
The Subcommittee Chair and Vice Chair will lead a discussion regarding possibly requiring participating states to audit 100% of the motor carriers identified through roadside inspection. The Subcommittee may take action to recommend to the Board that participating states audit all unregistered motor carriers identified through roadside enforcement.
- X. Review the Current Focused Anomaly Reviews (FARs) Audits Assigned to the States—Subcommittee Chair and Vice Chair
For Discussion and Possible Subcommittee Action
The Subcommittee Chair and Vice Chair will lead a discussion regarding the current number of FARs assigned to the states and consider options to increase the number of FARs assigned to the states. The Subcommittee may take action to recommend to the Board an increase in the number of FARs required to be processed annually by each participating state.
- XI. Definition of Commercial Motor Vehicle for UCR Purposes—Subcommittee Chair and UCR Executive Director
For Discussion and Possible Subcommittee Action
The Subcommittee Chair and the UCR Executive Director will provide potential adjustments to the definition of a “Commercial Motor Vehicle” for UCR purposes. The adjustments are clarifying language that retains the definition as set forth by reference in the UCR Act (49 U.S. Code 31101.) The Subcommittee may take action to adopt the clarifying language and recommend to the Board that it be used in the Handbook.
- XII. State Compliance Reviews—UCR Depository Manager
The UCR Depository Manager will provide an update on plans to conduct state compliance reviews and will remind states that have been selected for reviews in 2021.
- XIII. UCR Depository Audit for 2019—UCR Depository Manager
The UCR Depository Manager will provide an update on the financial statement audit of the Depository for each of the years ended December 31, 2019 and December 31, 2018.
- XIV. Other Business—Subcommittee Chair
The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.
- XV. Adjournment—Subcommittee Chair
The Subcommittee Chair will adjourn the meeting.
The agenda will be available no later than 5:00 p.m. Eastern time, May 12, 2021 at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION:
Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, eleaman@board.ucr.gov.

Alex B. Leath,
Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2021-10479 Filed 5-13-21; 4:15 pm]

BILLING CODE 4910-YL-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0068]

Agency Information Collection Activity: Application for Service-Disabled Veterans Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 16, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System

(FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0068" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0068" in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Application for Service-Disabled Veterans Insurance VA Form 29-4364 and VA Form 29-0151.

OMB Control Number: 2900-0068.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by veterans to apply for Service Disabled Veterans Insurance, to designate a beneficiary and to select an optional settlement. The information is required by law, 38 U.S.C., Section 1922.

Affected Public: Individuals and households.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-10339 Filed 5-14-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0114]

Agency Information Collection Activity Under OMB Review: Statement of Marital Relationship

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Refer to "OMB Control No. 2900-0114."

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0114" in any correspondence.

SUPPLEMENTARY INFORMATION: **Authority:** 38 U.S.C. 101(3), 38 U.S.C. 101(31), and 38 U.S.C. 103(c).

Title: Statement of Marital Relationship (VA Form 21-4170).

OMB Control Number: 2900-0114.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21-4170 is used to gather information that is necessary to determine whether a valid common law marriage was established. The form is used by persons claiming to be common

law widows/widowers of deceased veterans and by veterans and their claimed common law spouses. Benefits cannot be authorized unless a valid marriage is established.

This is a reinstatement only with no changes. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 46 on March 11, 2021, page 13968.

Affected Public: Individuals or Households.

Estimated Annual Burden: 919.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,205.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-10315 Filed 5-14-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0386]

Agency Information Collection Activity: Interest Rate Reduction Refinancing Loan Worksheet

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular

information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900–0386.

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0386” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Interest Rate Reduction Refinancing Loan Worksheet (VA Form 26–8923).

OMB Control Number: 2900–0386.

Type of Review: Revision of a currently approved collection.

Abstract: The major use of this form is to determine Veterans eligible for an exception to pay a funding fee in connection with a VA-guaranteed loan. Lenders are required to complete VA Form 26–8923 on all interest rate reduction refinancing loans and submit the form to the Veteran no later than the third business day after receiving the Veteran’s application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 13789 on March 10, 2021, pages 13789).

Affected Public: Individuals or Households.

Estimated Annual Burden: 156,685 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Frequency of response is generally one time per IRRRL.

Estimated Number of Respondents: 662,065.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–10299 Filed 5–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Agency Information Collection Activity Under OMB Review: Request for Employment Information in Connection With Claim for Disability Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900–0065.”

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0065” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1502.

Title: Request for Employment Information in Connection with Claim for Disability Benefits (VA Form 21–4192).

OMB Control Number: 2900–0065.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–4192 is used to gather necessary employment information from veterans’ employers so VA can determine eligibility to increased disability benefits based on unemployability. Without this information, determination of entitlement would not be possible.

This is a reinstatement only, with no substantive changes, and the respondent burden has decreased.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 45 on March 10, 2021, pages 13791 and 13792.

Affected Public: Private Sector.
Estimated Annual Burden: 6,313 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,250.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–10295 Filed 5–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activity Under OMB Review: Supplement to VA Forms 21–526EZ, 21P–534EZ, and 21P–535 (For Philippine Claims)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to OMB Control No. 2900–0094.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise

and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900-0094” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 101 and 6104.

Title: Supplement to VA Forms 21-526EZ, 21P-534EZ, and 21P-535 (For Philippine Claims) (VA Form 21-4169).

OMB Control Number: 2900-0094.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21-4169 is used to gather the necessary information to determine whether a claimant’s service qualifies as service in the Commonwealth Army of the Philippines or recognized guerrilla organizations. The form is used for the sole purpose of collecting the information needed to determine eligibility for benefits based on such service, including service information, proof of service, place of residence, and membership in pro-Japanese, pro-German, or anti-American Filipino organizations.

This is a reinstatement only with no substantive changes. The respondent burden has not changed.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 45 on March 10, 2021, pages 13789 and 13790.

Affected Public: Individuals or Households.

Estimated Annual Burden: 250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-10297 Filed 5-14-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0079]

Agency Information Collection Activity Under OMB Review: Employment Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900-0079.”

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900-0079” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501 and 5317.

Title: Employment Questionnaire (VA Form 21-4140).

OMB Control Number: 2900-0079.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Forms 21-4140 is used to gather the necessary information to

determine continued entitlement to individual unemployability. 38 CFR 3.652 provides that recipients are required to certify, when requested, that the eligibility factors which established entitlement to the benefit being paid continue to exist. Individual unemployability is awarded based on a veteran’s inability to be gainfully employed due to service-connected disabilities, and entitlement may be terminated if a veteran begins working. Without information about recipients’ employment, VA would not be able to determine continued entitlement to individual unemployability, and overpayments would result.

The respondent burden has decreased due to the removal of one of the forms listed within this collection. VA Form 21-4140 has not been changed; this is a reinstatement only.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 46 on March 11, 2021, page 13969.

Affected Public: Individuals or Households.

Estimated Annual Burden: 247.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,960.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-10298 Filed 5-14-21; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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Monday,

No. 93

May 17, 2021

Part II

Department of the Treasury

31 CFR Part 35

Coronavirus State and Local Fiscal Recovery Funds; Interim Final Rule

DEPARTMENT OF THE TREASURY**31 CFR Part 35**

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds**AGENCY:** Department of the Treasury.**ACTION:** Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:**I. Background Information****A. Overview**

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected

over 32 million and killed over 575,000 Americans.¹ The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.² As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.³ During this time, a significant share of households have faced food and housing insecurity.⁴ Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.⁵ As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.⁶

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of

¹ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited May 8, 2021).

² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE>, May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNU02000000>, May 3, 2021.

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;> U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, <https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675-80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁵ Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm>.

⁶ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.

COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.⁷ Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.⁸ These cuts to State, local, and Tribal government workforces

⁷ Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), <https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities>.

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.⁹

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,¹⁰ as well as higher rates of unemployment and lack of basic necessities like food and housing.¹¹ Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID-19 health outcomes.¹² Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.¹³ Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.¹⁴ Unfortunately, the pandemic

also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

a lifetime (June 2020), https://webtest.childreainsstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf; Andrew Bacher-Hicks et al., *Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time*, J. of Public Econ. Vol. 193(C) (July 2020), available at <https://www.nber.org/papers/w27555>.

¹⁵ See, e.g., Tyler Atkinson & Alex Richter, *Pandemic Disproportionately Affects Women, Minority Labor Force Participation*, <https://www.dallasfed.org/research/economics/2020/1110> (last visited May 9, 2021); Jared Bernstein & Janelle Jones, *The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color*, https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf (last visited May 9, 2021).

¹⁶ American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 *et seq.* The term "state" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term "territory" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean "the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131)." See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term "local governments" as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ Sections 602, 603 of the Act.

¹⁹ The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (2020).

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include "directly or indirectly offset[ing] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation."

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID-19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

⁹ Tracy Gordon, *State and Local Budgets and the Great Recession*, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁰ Sebastian D. Romano et al., *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States, March–December 2020*, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

¹² Lisa R. Fortuna et al., *Inequity and the Disproportionate Impact of COVID-19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response*, *Psychological Trauma* Vol. 12(5):443–45 (2020), available at <https://psycnet.apa.org/fulltext/2020-37320-001.pdf>.

¹³ Emily Vogles et al., *53% of Americans Say the internet Has Been Essential During the COVID-19 Outbreak* (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹⁴ Emma Dorn et al., *COVID-19 and student learning in the United States: The hurt could last*

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID-19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID-19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION**. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting

requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID-19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.²⁰

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

²⁰ Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID-19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID-19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID-19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.²¹ By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.²² This wave brought acute

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

²² Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21, 2021, *MMWR Morb Mortal Wkly Rep* 2021, 69(18):551–56 (May 8, 2021), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm>.

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID-19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.²³ By early May 2021, the United States has experienced over 32 million confirmed COVID-19 cases and over 575,000 deaths.²⁴

Mitigating the impact of COVID-19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID-19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational

needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access

services.²⁹ Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.³⁴

²⁹ Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19, *N. Engl. J. Med.* 383:2302–04 (Dec. 10, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

³⁰ Jeanne M. Santoli et al., Effects of the COVID-19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, *Morb. Mortal. Wkly. Rep.* 69(19):591–93 (May 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm>; Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID-19 Pandemic—New York City, March 1–June 27, 2020, *Morb. Mortal. Wkly. Rep.* 69(30):999–1001 (Jul. 31 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm>.

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Romano, *supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁴ The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

²⁶ Panchal, *supra* note 4; Mark E. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

²⁸ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8, 2021).

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, *January–May 2020*, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

³⁹ See, e.g., Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra*

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID-19 public health emergency, including:

- *COVID-19 Mitigation and Prevention*. A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in

note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- *Medical Expenses*. The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵

Strategy for K–12 Schools through Phased Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

⁴² Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), available at <https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register-2021-00827.pdf>.

⁴³ Centers for Disease Control and Prevention, *supra* note 24.

⁴⁴ Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited Apr. 26, 2021).

⁴⁵ Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

- *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

- *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

the COVID-19 response. Recipients need not routinely track staff hours.

- *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),⁴⁷ to families living in QCTs, or when these services are provided by Tribal governments.⁴⁸ Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the

⁴⁷ Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

⁴⁸ U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, <https://www.huduser.gov/portal/datasets/qct.html> (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf> (last visited Apr. 26, 2021).

specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;
- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

⁴⁹ The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. See, e.g., U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> (last visited Apr. 26, 2021).

⁵⁰ National Commission on COVID-19 and Criminal Justice, Impact Report: COVID-19 and Crime (Jan. 31, 2021), <https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/> (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID-19 pandemic, *Am. J. of Emerg. Med.* 38(12): 2753-55 (Dec. 1, 2020), available at [https://www.ajemjournal.com/article/S0735-6757\(20\)30307-7/fulltext](https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext) (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹

Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic,

inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

⁵¹ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamorro & Maria J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁵² U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵³ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁵⁵ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁵⁶ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

⁵⁷ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*,

These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced

Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

⁶⁴ Board of Governors of the Federal Reserve System, *supra* note 5.

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

⁶⁸ U.S. Census Bureau, Small Business Pulse Survey, <https://portal.census.gov/pulse/data/> (last visited May 8, 2021).

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ See e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level (CLF16OV), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empsit/cpseea04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empsit/cpseea05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

economic and financial challenges due to the pandemic.⁷²

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.⁷³ These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID-19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor

neighborhoods more than doubling by 2010–2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ an

⁷⁷ Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

⁷⁸ David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.

⁷⁹ Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. See, e.g., Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, *PLoS ONE* 13(7) (2018), available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144>; Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, <https://opportunityinsights.org/education/> (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education> (last visited Apr. 26, 2021).

⁸⁰ See, e.g., Bacher-Hicks, *supra* note 14.

⁸¹ A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. See Institute of Education Sciences, Monthly School Survey Dashboard, <https://ies.ed.gov/schoolsurvey/> (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only.

effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.⁸⁴ Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.⁸⁵

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

See Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), <https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07> (last visited May 4, 2021).

⁸² HHS, *supra* note 79.

⁸³ Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, *J. of Pediatrics* Vol. 223:188–93 (Aug. 1, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)30606-5/abstract](https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract).

⁸⁴ Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey. Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren, Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. <https://doi.org/10.18128/D030.V8.0>; see also Donna Feir & Charles Golding, Native Employment During COVID-19: Hard hit in April but Starting to Rebound? (Aug. 5, 2020), <https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound>.

⁸⁵ Moreno & Sobrepena, *supra* note 73.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

⁷³ Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

⁷⁴ Kim Parker et al., Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>; Gould, *supra* note 55.

⁷⁵ See *infra* Section II.B of this Supplementary Information.

⁷⁶ Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), <https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/>.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁸⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must “respond to” the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and/or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began

and remain so due to the negative economic impacts of the pandemic.

- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative

economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical

⁸⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and

- Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.⁸⁸ Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the

pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency.⁸⁹ Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including

tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID-19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID-19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

- *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.⁹¹

⁸⁷ See Federal Reserve Bank of Cleveland, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx> (discussing the impact of COVID-19 on minority owned businesses).

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

⁸⁹ From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. See U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/USLAH> (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (e.g. revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. See Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.

⁹⁰ HUD, *supra* note 48.

⁹¹ Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), <https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of->

Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.⁹² Eligible services include:

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.⁹³

- *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other

persistent-urban-inequality-and-concentrated-poverty/.

⁹² U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11> (last visited Apr. 26, 2021).

⁹³ The Opportunity Atlas, <https://www.opportunityatlas.org/> (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), available at <https://opportunityinsights.org/paper/neighborhoodsi/>.

⁹⁴ See supra notes 52 and 84.

extended learning and enrichment programs; and

- Evidence-based practices to address the social, emotional, and mental health needs of students;

- *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.⁹⁴ Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;

- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and

- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (e.g., affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. See Section II.D of this **SUPPLEMENTARY INFORMATION**. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. See Section II.C of this **SUPPLEMENTARY INFORMATION**.

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID-19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries"

affected by the COVID-19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID-19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.⁹⁵ These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have

contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.¹⁰⁰

⁹⁶ See, e.g., Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, <https://covid.cdc.gov/covid-data-tracker/#health-care-personnel> (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID-19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, <https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff> (last visited May 4, 2021).

⁹⁷ See, e.g., The Lancet, The plight of essential workers during the COVID-19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), available at <https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext>.

⁹⁸ *Id.*

⁹⁹ Joanna Gaitens et al., Covid-19 and essential workers: A narrative review of health outcomes and moral injury, *Int'l J. of Env'tl. Research and Pub. Health* 18(4):1446 (Feb. 4, 2021), available at <https://pubmed.ncbi.nlm.nih.gov/33557075/>; Tiana N. Rogers et al., Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States, *World Med. & Health policy* 12(3):311-27 (Aug. 5, 2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358> (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

⁹⁵ Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.¹⁰¹ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.¹⁰² The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.”¹⁰³ The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.¹⁰⁴ These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others

as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would “respond to” to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker’s total pay above 150 percent of their residing state’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, or their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.¹⁰⁵

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.¹⁰⁶ For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID-19, it must be entirely additive to a worker’s regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker’s normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.¹⁰⁷ Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

¹⁰⁶ Treasury performed this analysis with data from the U.S. Census Bureau’s 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

¹⁰⁷ However, such compensation must be “in addition to” remuneration or wages already received. That is, employers may not reduce such workers’ current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

¹⁰³ Sections 602(g)(2), 603(g)(2) of the Act.

¹⁰⁴ The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

¹⁰⁵ County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. See U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrscst.htm> (last visited May 1, 2021); U.S. Bureau

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. See Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.¹⁰⁸ Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same

period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.¹¹⁴

¹⁰⁹ Major sources include personal income tax, corporate income tax, sales tax, and property tax. See Lucy Dadayan, States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

¹¹¹ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. See Moreno & Sobrepena, *supra* note 73.

¹¹² See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

¹¹³ State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of “general revenue” for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term “general revenue” to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.¹¹⁶ In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

¹¹⁵ U.S. Census Bureau, Annual Survey of State and Local Government Finances, <https://www.census.gov/programs-surveys/gov-finances.html> (last visited Apr. 30, 2021).

¹¹⁶ The interim final rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (*i.e.*, inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

¹⁰⁸ ARPA, *supra* note 16.

the COVID-19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.¹¹⁷

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.¹¹⁸ For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in

intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.¹¹⁹ For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.¹²⁰

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID-19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID-19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.¹²¹ Although revenue may decline for

reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.
- *Step 2:* Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^{(n/12)}]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

¹¹⁹ U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), <https://www2.census.gov/govs/class/classfull.pdf>.

¹²⁰ For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), <https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html>.

¹²¹ For example, following the 2007-09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. See U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/graph/?g=r3YI> (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

¹²² Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015-2018 represents the most recent available data. See U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), <https://www.census.gov/programs-surveys/gov-finances/data/datasets.html>.

¹¹⁷ Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. See Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287-B (Feb. 2009).

¹¹⁸ *Supra* note 116.

years prior to the COVID-19 public health emergency.

- *Step 3:* Identify *actual revenue*, which equals revenues collected over the past twelve months as of the calculation date.

- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual*

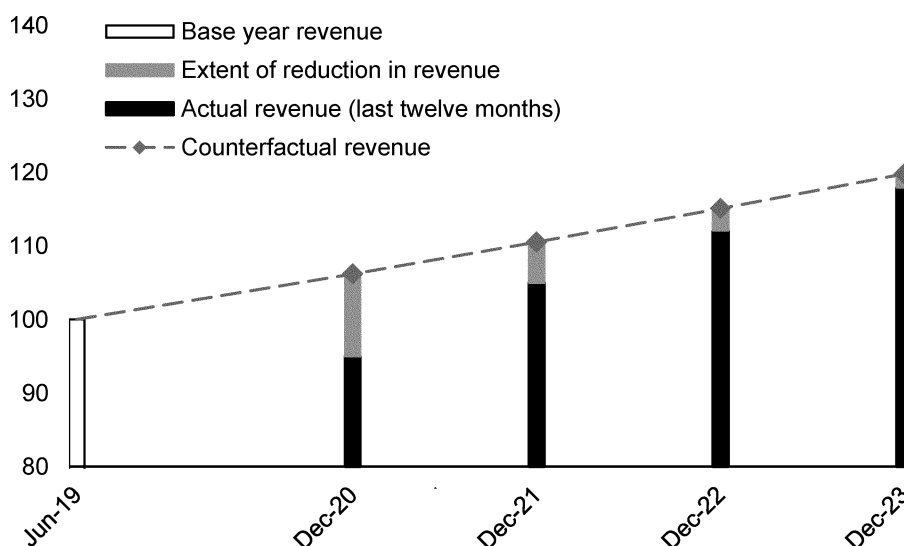
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1

percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for

borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would

not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID-

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID-19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury do to support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.¹²⁴

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to

ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.¹²⁵ By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).¹²⁶

¹²⁵ Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

¹²⁶ Environmental Protection Agency, Drinking Water State Revolving fund, <https://www.epa.gov/dwsrf> (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf> (last visited Apr. 30, 2021).

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),¹³¹ with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.¹³² Like the CWSRF,

¹²⁷ Water Quality Act of 1987, Public Law 100-4.

¹²⁸ Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111-5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113-121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115-270.*

¹²⁹ See Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA-816-R-00-023 (Nov. 2000), <https://nepis.epa.gov/Exec/zyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF>; See also Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021).

¹³⁰ 33 U.S.C. 1383(c). See also Environmental Protection Agency, *Overview of Clean Water State Revolving Fund Eligibilities* (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, *Clean Water Act: A Summary of the Law*, Congressional Research Service (Oct. 18, 2016), <https://fas.org/sgp/crs/misc/RL30030.pdf>; Jonathan L. Ramseur, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, Congressional Research Service (May 22, 2018), <https://fas.org/sgp/crs/misc/R44963.pdf>.

¹³¹ 42 U.S.C. 300j-12.

¹³² Environmental Protection Agency, *Drinking Water State Revolving Fund Eligibility Handbook*, (June 2017), https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf; Environmental Protection Agency, *Drinking Water*

¹²⁴ Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

the DWSRF provides States with the flexibility to meet the needs of their populations.¹³³ The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.¹³⁴ In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.¹³⁵

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.¹³⁶ The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can be deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID-19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.¹³⁷ Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to “assist systems most in need on a per household basis according to state affordability criteria” would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.¹³⁸

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also

support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, underserved, or rural communities? How do these projects differ from DWSRF and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j-12(b)(3)(A).

¹³⁶ Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021); 42 U.S.C. 300j-12.

¹³⁷ House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), <https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief>.

¹³⁸ Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf; Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, <https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations> (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure

exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to

a minimum of 100 Mbps symmetrical for download and upload speeds.¹⁴⁴ In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf>. Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide*, Apr. 29, 2021.

¹⁴⁷ *Id.* See also United States's Mobile and Broadband internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

to create and share content using video sharing, video conferencing, and other applications.¹⁴⁸

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.¹⁴⁹ As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.¹⁵⁰ For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.¹⁵¹ These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8

¹⁴⁸ *Id.*

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org*: What is Symmetrical internet? (March 2020).

gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP)¹⁵⁶ of the Department of Commerce, which provides Federal funding to deploy broadband

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), available at <https://openvault.com/ovbi-covid-19-drove-15-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), available at <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2020), available at <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, available at <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> [www.oecd.org/sti/broadband-statistics](https://www.oecd.org/sti/broadband/broadband-statistics).

¹⁵⁵ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BBIP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ *Rural Digital Opportunity Fund*, *supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These

four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a predetermined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments¹⁶⁰), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation¹⁶¹ during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. See Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—

i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is

offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

- State or territory tax changes that would increase any source of general

¹⁶⁰ In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this

SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. See Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation.” A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute

or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–

19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year” refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of “tax revenue” is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. See section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States

and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that

such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an

offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this

¹⁶⁹ This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The

definition of “incurred” does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of “obligation” that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to “respond to” the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing

grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

¹⁷³ Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

¹⁷⁴ Sections 602(e) and 603(e) of the Act.

¹⁷⁰ See 42 CFR 433.51 and 45 CFR 75.306.

¹⁷¹ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

¹⁷² Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

recipient. As discussed further in Sections III.B and VIII of this SUPPLEMENTARY INFORMATION, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.¹⁷⁵ This process will allow the Secretary to respond to the

issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.¹⁷⁶

¹⁷⁶ With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements

Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.¹⁷⁷ For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

¹⁷⁷ The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, *J. of Public Econ.* (Nov. 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389>.

¹⁷⁵ The interim final rule also provides that Treasury may extend any deadlines.

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.¹⁷⁸ Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021¹⁷⁹) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan

cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."¹⁸⁰ Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and

regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

¹⁷⁸ Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, <https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions> (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited Apr. 27, 2021).

¹⁷⁹ U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, <https://www.bls.gov/news.release/laus.t01.htm> (last visited Apr. 30, 2021).

¹⁸⁰ Section 602(c)(3) of the Act.

“public benefit corporation” that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for \$19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID-19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury’s implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU’s use of Fiscal Recovery Funds based on the NEU’s proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU’s distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.*, requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for

complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU’s most recent budget. The most recent budget is defined as the NEU’s most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury’s implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.*, a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government’s NEU allocation under section 603(b)(2) but not to the consolidated government’s county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local

government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(i)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient’s expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient’s utilization of the award funds. The reports will include the same general data (*e.g.*, on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As

discussed below, the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.”¹⁸¹ The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸² This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory

action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available

¹⁸¹ 5 U.S.C. 553(a)(2).

¹⁸² 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”).

techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the \$350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers \$350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond

to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined \$350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.¹⁸³ Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007-09 recession.¹⁸⁴

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

¹⁸³ Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, *American Econ. J.: Econ. Policy*, 4:3 118-45 (Aug. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118>.

¹⁸⁴ See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients’ overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury’s approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury’s decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients’ pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury’s approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain threshold. To set this threshold, Treasury analyzed data

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

- *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

- *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need,

particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁸⁵ To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;¹⁸⁶ and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many

have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal 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. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

¹⁸⁵ Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (last visited May 9, 2021).

¹⁸⁶ David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans Hit Hardest by Job Losses in State and Local Governments, <https://www.epi.org/publication/bp339-public-sector-jobs-crisis> (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus “both clearly and directly related to a federal grant program.” *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the “process necessary to maintain state . . . eligibility for federal funds,” *id.*, as well as the “method[s] by which states can . . . qualify for federal aid,” and other “integral part[s] of the grant program,” *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553’s requirements. The ARPA is a law responding to a historic economic and

public health emergency; it is “extraordinary” legislation about which “both Congress and the President articulated a profound sense of ‘urgency.’” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to “respond to the public health emergency,” and the urgency is further exemplified by Congress’s command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, “[t]o the extent practicable,” funds must be provided to Tribes and cities “not later than 60 days after the date of enactment.” *See Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been “virtually impossible”). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA “covered period” began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.*, payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes) ...	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	†20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/oooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

**5,050–TBD.
***Per year after first year.
† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report

and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- (b) the accuracy of the estimate of the burden of the collection of information;
- (c) ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) ways to minimize the burden of the collection of information;
- (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule

pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.	
35.1	Purpose.
35.2	Applicability.
35.3	Definitions.
35.4	Reservation of authority, reporting.
35.5	Use of funds.
35.6	Eligible uses.
35.7	Pensions.
35.8	Tax.
35.9	Compliance with applicable laws.
35.10	Recoupment.
35.11	Payments to States.
35.12	Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et*

seq.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into

contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.*

Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance

or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\left(\frac{n_t}{12}\right)}] - \text{Actual General Revenue}_t; 0 \}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory

resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations—(1) In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment—(1) In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the

requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance

with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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