



FEDERAL REGISTER

Vol. 86

Wednesday

No. 100

May 26, 2021

Pages 28235–28468

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.federalregister.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.govinfo.gov, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpocusthelp.com.

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 86 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email FRSubscriptions@nara.gov
Phone 202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



Contents

Federal Register

Vol. 86, No. 100

Wednesday, May 26, 2021

Agency for Toxic Substances and Disease Registry

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28352–28354

Agriculture Department

See Farm Service Agency

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Business and Professional Classification Report, 28332–28333

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28354–28359

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of the Child Welfare Capacity Building Collaborative, 28360–28362
Low Income Household Water Assistance Program Plan, 28362
Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations, 28359–28360

Civil Rights Commission

NOTICES

Meetings:
Kansas Advisory Committee, 28332

Coast Guard

RULES

Safety Zone:
East River, New York, NY, 28270–28273
Explosive Arc at Military Ocean Terminal Concord, Suisun Bay, Concord, CA, 28273–28275
Tugs Kimberly Anne and Westwind and Barge Big Digger operating in the Straits of Mackinac, MI, 28268–28270
Safety Zones:
Annual Fireworks Displays within the Captain of the Port Sector Puget Sound, 28267–28268
Special Local Regulation:
Potomac River, Between Jones Point, VA, and National Harbor, MD, 28265–28267

Commerce Department

See Census Bureau
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency

RULES

Collective Investment Funds:
Prior Notice Period for Withdrawals, 28238–28241

Delaware River Basin Commission

RULES

Regulatory Program Fees and Water Charges Rates, 28262–28263

Drug Enforcement Administration

NOTICES

Importer of Controlled Substances Application:
Almac Clinical Services Incorp., 28384
Purisy, LLC, 28383–28384

Economic Analysis Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Services Surveys; Quarterly Survey of Financial Services Transactions between United States Financial Services Providers and Foreign Persons, 28333–28335

Education Department

PROPOSED RULES

Hearing:
Negotiated Rulemaking Committee, 28299–28300

Employment and Training Administration

NOTICES

Meetings:
Native American Employment and Training Council, 28384–28385

Energy Department

PROPOSED RULES

Energy Conservation Program:
Test Procedure and Energy Conservation Standards for Circulator Pumps and Small Vertical In-line Pumps, 28298–28299

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area, 28275–28277
Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants under the Safe Drinking Water Act; Analysis and Sampling Procedures, 28277–28290

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
EPA's ENERGY STAR Product Labeling, 28339–28340

Equal Employment Opportunity Commission

RULES

2021 Adjustment of the Penalty for Violation of Notice Posting Requirements, 28263–28265

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28340–28342

Farm Service Agency**NOTICES**

Funds Availability:

American Rescue Plan Act Loan Payment, 28329–28332

Federal Aviation Administration**RULES**

Instrument Flight Rules Altitudes, 28253–28262

Special Conditions:

Haeco Cabin Solutions, Boeing Commercial Airplanes Model 737-800 Airplane; Structure-Mounted Airbags, 28250–28253

NOTICES

Intent of Waiver with Respect to Land:

West Michigan Regional Airport, Holland, MI, 28430

Federal Communications Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28342–28343

Federal Emergency Management Agency**RULES**

Suspension of Community Eligibility, 28290–28292

Federal Maritime Commission**NOTICES**

Agreements Filed, 28343

Federal Motor Carrier Safety Administration**NOTICES**

Qualification of Drivers; Exemption Applications:

Epilepsy and Seizure Disorders, 28432–28433

Hearing, 28430–28431, 28433–28434

Federal Railroad Administration**NOTICES**

Application:

Approval of Discontinuance or Modification of a Railroad Signal System, 28434–28435

Railroads' Requests to Amend Their Positive Train Control Safety Plans and Positive Train Control Systems, 28435

Federal Reserve System**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28344–28351

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Announcement of Board Approval under Delegated Authority and Submission to OMB, 28343–28344

Federal Trade Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28351–28352

Foreign Assets Control Office**NOTICES**

Blocking or Unblocking of Persons and Properties, 28438–28439

Foreign Trade Zones Board**NOTICES**

Authorization of Production Activity:

BMW Manufacturing Co., LLC, Foreign Trade Zone 38, Charleston, SC, 28335

Health and Human Services Department

See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention

See Children and Families Administration

See Health Resources and Services Administration

See National Institutes of Health

Health Resources and Services Administration**NOTICES**

Privacy Act; Systems of Records, 28362–28369

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

See U.S. Customs and Border Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Post-Award Contract, 28372–28374

Indian Affairs Bureau**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Bureau of Indian Education Adult Education Program, 28375

Class III Tribal-State Gaming Compact Process, 28376

Sovereignty in Indian Education Grant Program, 28374–28375

Industry and Security Bureau**NOTICES**

Reporting for Calendar Year 2020 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms, 28335–28336

Interior Department

See Indian Affairs Bureau

See National Park Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Watercraft Inspection and Decontamination Regional Data Sharing for Trailered Boats, 28376–28378

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Pasta from Italy, 28336–28338

Glycine from the People's Republic of China, 28336

Request for Applications:

United States Investment Advisory Council; Correction, 28338–28339

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Tobacco Heating Articles and Components Thereof, 28382–28383

Certain Wearable Electronic Devices with ECG Functionality and Components Thereof, 28382

Justice Department

See Drug Enforcement Administration

Labor Department

See Employment and Training Administration

See Mine Safety and Health Administration

Mine Safety and Health Administration**NOTICES**

Petitions for Modification:

Application of Existing Mandatory Safety Standards,
28385–28397

National Credit Union Administration**RULES**

Derivatives, 28241–28250

National Highway Traffic Safety Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Submission to the Office of Management and Budget for
Review and Approval; Automated Driving Systems
2.0 A Vision for Safety, 28436–28438

National Institutes of Health**NOTICES**

Meetings:

Center for Scientific Review, 28370–28371
National Cancer Institute, 28371
National Institute of Allergy and Infectious Diseases,
28371
National Institute of General Medical Sciences, 28370
Novel and Exceptional Technology and Research
Advisory Committee, 28369–28370

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Northeastern United States:

Blueline Tilefish Fishery; 2021 Specifications, 28292–
28293

Fisheries Off West Coast States:

West Coast Salmon Fisheries; 2021 Management
Measures; Correction, 28293–28294

Pacific Halibut Fisheries:

Catch Sharing Plan, 28294–28297

PROPOSED RULES

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries;
Specifications, 28323–28325

Fisheries Off West Coast States:

Coastal Pelagic Species Fisheries; Annual Specifications;
2021-2022 Annual Specifications and Management
Measures for Pacific Sardine, 28325–28328

NOTICES

Meetings:

New England Fishery Management Council, 28339

National Park Service**NOTICES**

Inventory Completion:

Princeton University, Princeton, NJ, 28381–28382
San Juan County Museum Association DBA Salmon
Ruins Museum, Bloomfield, NM, 28378–28381

Nuclear Regulatory Commission**RULES**

List of Approved Spent Fuel Storage Casks:

Holtec International HI-STORM 100 Cask System
Certificate of Compliance No. 1014, Amendment No.
15, 28237–28238

Patent and Trademark Office**RULES**

Changes to Representation of Others Before the United
States Patent and Trademark Office, 28442–28467

PROPOSED RULES

Electronic Submission of a Sequence Listing, a Large Table,
or a Computer Program Listing Appendix in Patent
Applications, 28301–28323

Personnel Management Office**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 28397–28398

Postal Service**NOTICES**

Classification Changes:

First-Class Package International Service, 28398–28399

Presidential Documents**ADMINISTRATIVE ORDERS**

Defense and National Security:

National Defense Authorization Act for Fiscal Year 2012
(Presidential Determination No. 2021-07 of May 19,
2021), 28235

Securities and Exchange Commission**NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:

Financial Industry Regulatory Authority, Inc., 28405–
28407
ICE Clear Credit LLC, 28425–28427
Municipal Securities Rulemaking Board, 28416–28418
Nasdaq PHLX LLC, 28418–28420
New York Stock Exchange LLC, 28399–28405
NYSE Arca, Inc., 28410–28416, 28420–28425
NYSE Chicago, Inc., 28427–28430
The Nasdaq Stock Market, LLC, 28407–28410

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See National Highway Traffic Safety Administration

Treasury Department

See Comptroller of the Currency

See Foreign Assets Control Office

U.S. Customs and Border Protection**NOTICES**

Tuna Tariff-Rate Quota for Calendar Year 2021:

Tuna Classifiable under Subheading 1604.14.22,
Harmonized Tariff Schedule of the United States,
28371–28372

U.S.-China Economic and Security Review Commission**NOTICES**

Hearings, 28439

Separate Parts In This Issue**Part II**

Commerce Department, Patent and Trademark Office,
28442–28467

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Administrative Orders:**

Presidential

Determinations:

No. 2021-07 of May

19, 202128235

10 CFR

7228237

Proposed Rules:

42928298

43128298

12 CFR

928238

70128241

70328241

74128241

74628241

14 CFR

2528250

9528253

18 CFR

40128262

42028262

29 CFR

160128263

33 CFR

10028265

165 (4 documents)28267,
28268, 28270, 28273**34 CFR****Proposed Rules:**

Ch. VI28299

37 CFR

128442

1128442

Proposed Rules:

128301

40 CFR

5228275

14128277

44 CFR

6428290

50 CFR

64828292

66028293

67928294

Proposed Rules:

64828323

66028325

Presidential Documents

Title 3—

Presidential Determination No. 2021–07 of May 19, 2021

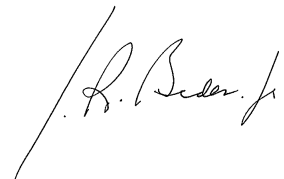
The President

Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012**Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy**

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration, including the report submitted in February 2021, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, May 19, 2021

Rules and Regulations

Federal Register

Vol. 86, No. 100

Wednesday, May 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2020–0257]

RIN 3150–AK53

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System Certificate of Compliance No. 1014, Amendment No. 15

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 14, 2021, for the direct final rule that was published in the *Federal Register* on March 29, 2021. The direct final rule amends the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the “List of approved spent fuel storage cask” to include Amendment No. 15 to Certificate of Compliance No. 1014.

DATES: Effective date: The effective date of June 14, 2021, for the direct final rule published March 29, 2021 (86 FR 16291), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2020–0257 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–2020–0257. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The 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. ML20295A412. 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. ML21118A862.

- *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: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342 or email: Vanessa.Cox@nrc.gov.

SUPPLEMENTARY INFORMATION: On March 29, 2021 (86 FR 16291), 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 Holtec International HI–STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Amendment No. 15 to Certificate of Compliance No. 1014. Amendment No. 15 revises the certificate of compliance as follows:

1. Adds a new version of a transfer cask, HI–TRAC MS (maximum shielded), which includes an option for variable weight of the lead and water jacket and cooling passages to the bottom lid. HI–TRAC MS is to be used with all multipurpose canisters (MPCs) approved for use in Amendment Nos. 0 through 14 to the HI–STORM 100 System and the newly proposed MPC–32M, MPC–32 Version 1, and MPC–68 Version 1.

2. Includes MPC–32M for storage in the HI–STORM 100 System.

3. Includes MPC–32 Version 1 and MPC–68 Version 1 for storage in HI–STORM 100 System.

4. Adds the new overpack, HI–STORM 100S Version E, and allows it to be used with all MPCs approved for use in Amendment Nos. 0 through 14 to the HI–STORM 100 System and the newly proposed MPC–32M, MPC–32 Version 1, and MPC–68 Version 1.

5. Adds three additional boiling water reactor fuel types to the approved content for MPC–68M: 10x10I, 10x10J, and 11x11A.

6. Lowers the allowed ambient temperature from 80 °F to 70 °F for HI–STORM 100S Version E.

7. Adds HI–DRIP and dry ice jacket ancillary system as additional cooling when the MPC is loaded in the HI–TRAC transfer cask.

8. Allows for partial gadolinium credit for boiling water reactor fuel assemblies types 10x10 and 11x11 assembly classes in MPC–68M.

9. Includes allowance for canisters currently loaded under earlier amendments which had different helium leak test requirements.

10. Updates Drawing No. 7195 for the MPC–68M by removing dimensions which are not used in the safety analysis.

11. Includes dry ice jacket as optional alternate cooling method for short-term operation of the loaded HI–TRAC.

In the direct final rule published on March 29, 2021, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on June 14, 2021. The NRC received and docketed one comment on the companion proposed rule (86 FR 16310; March 29, 2021). An electronic copy of the comment can be obtained from the Federal Rulemaking website <https://www.regulations.gov> under Docket ID NRC–2020–0257 and is also available in ADAMS under Accession No. ML21090A148.

The NRC evaluated the comment against the criteria described in the direct final rule and determined that the comment was not significant and adverse. Specifically, the comment agreed with this rulemaking and, thus, was not adverse. Therefore, the direct final rule will become effective as scheduled.

Dated: May 21, 2021.

For the Nuclear Regulatory Commission.
Angella M. Love Blair,
*Acting Chief, Regulatory Analysis and
 Rulemaking Support Branch, Division of
 Rulemaking, Environmental, and Financial
 Support, Office of Nuclear Material Safety
 and Safeguards.*

[FR Doc. 2021-11192 Filed 5-25-21; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket ID OCC-2020-0031]

RIN 1557-AE99

Collective Investment Funds: Prior Notice Period for Withdrawals

AGENCY: Office of the Comptroller of the
 Currency, Treasury.

ACTION: Final rule.

SUMMARY: The OCC is adopting as final, with one minor change, the interim final rule published in the **Federal Register** on August 13, 2020, that codifies and creates an exception to the standard withdrawal period for a bank administering a collective investment fund invested primarily in real estate or other assets that are not readily marketable (a covered CIF). Pursuant to the interim final rule, a bank administering a covered CIF may request OCC approval to extend the standard withdrawal period under limited circumstances and if certain conditions are met. The final rule adopts as final the changes made by the interim final rule and introduces a minor revision to one of the conditions necessary for the extension.

DATES: The interim final rule is effective May 26, 2021.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Assistant Director, Asa Chamberlayne, Counsel, or Daniel Perez, Counsel, Chief Counsel's Office, (202) 649-5490; or David Stankiewicz, Technical Expert for Asset Management Policy, Market Risk Policy Division, Bank Supervision Policy, 202-649-6360, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

A collective investment fund (CIF) is a bank-managed fiduciary fund that holds pooled assets. A national bank or Federal savings association

(collectively, a bank) that establishes and operates a CIF must do so in accordance with the criteria established under the fiduciary activities regulation of the Office of the Comptroller of the Currency (OCC) at 12 CFR 9.18.¹ A CIF is funded through contributions by the CIF's participants, which are the beneficial owners of the fund's assets. A bank admitting a CIF participant or withdrawing all or part of its participating interest (that is, allowing the participant to, in effect, redeem a proportionate interest in the assets of the CIF) must do so on the basis of a valuation of the CIF's assets.²

A bank administering a CIF invested primarily in real estate or other assets that are not readily marketable (a covered CIF) may require a prior notice period of up to one year for withdrawals.³ The OCC previously interpreted this notice period requirement as requiring the bank to withdraw an account within the prior notice period or, if permissible under the CIF's written plan, within one year after prior notice was required (standard withdrawal period).⁴ The OCC also recognized, however, that there were circumstances when a longer withdrawal period was appropriate. For example, during the 2009 financial crisis, the OCC permitted a bank to extend the time period for withdrawals, subject to certain conditions.⁵

During normal market conditions, a bank can typically satisfy withdrawal requests within the standard withdrawal period. However, in the event of unanticipated and severe market conditions, a bank may be faced with an increased number of withdrawal requests and reduced market liquidity. In such conditions, a bank that is required to sell CIF assets to satisfy withdrawals within the standard withdrawal period could have difficulty realizing a fair value for those assets. This could compel "fire sales" of CIF assets and lead to avoidable economic harm for CIF participants, which would be contrary to general fiduciary principles that require a CIF trustee to act in the best interests of CIF participants.

II. Interim Final Rule

On August 13, 2020, the OCC published an interim final rule in the **Federal Register** that codified the

standard withdrawal period for a bank administering a covered CIF and established a limited exception to that withdrawal period. The exception was intended to enable a bank to preserve the value of a CIF's assets for the benefit of fund participants during unanticipated and severe market conditions, such as those resulting from the current national health emergency concerning the coronavirus disease (COVID-19) outbreak.

Under the interim final rule, to satisfy the standard withdrawal period requirement, a bank administering a covered CIF that requires a prior notice period for withdrawals generally must withdraw an account within the prior notice period or, if permissible under the CIF's written plan, within one year after prior notice was required.

Under the exception established by the interim final rule, a bank may withdraw an account from a CIF up to one year beyond the standard withdrawal period with OCC approval and if certain conditions are met. Namely, the fund's written plan (including its notice and withdrawal policy) must authorize an extended withdrawal period and be fully disclosed to fund participants. In addition, the bank's board of directors, or a committee authorized by the board of directors, must determine that (1) due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants; and (2) the extended withdrawal period is consistent with 12 CFR part 9 and applicable law. The bank's board of directors, or a committee authorized by the board of directors, must also commit that the bank will act upon any withdrawal request as soon as practicable. Finally, the rule provides discretion for the OCC to impose additional conditions if the OCC determines that the conditions are necessary or appropriate to protect the interests of fund participants. The conditions established by this interim final rule were intended to ensure that the exception is only granted if it is consistent with fiduciary principles, applicable law, and the CIF's written plan.⁶ To ensure that the exception is consistent with these principles and requirements, and as described above, the OCC may impose additional conditions, such as requiring periodic progress reports from the bank.

In addition to the above, the interim final rule provided that if, due to

¹ Pursuant to 12 CFR 150.260, the terms "bank" and "national bank" as used in 12 CFR 9.18 are deemed to include a Federal savings association.

² 12 CFR 9.18(b)(5)(i).

³ 12 CFR 9.18(b)(5)(iii).

⁴ See, e.g., OCC Interpretive Letter No. 1121 (Aug. 2009) (Interpretive Letter 1121).

⁵ *Id.*

⁶ See 12 CFR 9.18(b)(1) (written plan requirements).

ongoing severe market conditions, a bank has been unable to satisfy withdrawal requests during the one-year extension period without causing harm to participants, the bank may request OCC approval for up to two additional one-year extensions. The OCC may only approve each additional one-year extension if the OCC determines that the bank has made a good faith effort to satisfy withdrawal requests during the original extension period and the bank has been unable to satisfy such requests without causing harm to participants due to ongoing severe market conditions. The bank must also continue to satisfy the conditions described above.

By creating a limited exception to the standard withdrawal period, the IFR permits a bank administering a covered CIF to take appropriate steps to satisfy account withdrawal requests during severe market conditions, while permitting an orderly liquidation of sufficient assets to raise cash through prudent and appropriate sales, as the return of more normal market conditions permit.

III. Comments Received

The OCC received comment letters from two commenters—a trade association and a law firm—that were relevant to the scope of the rulemaking.

Both commenters requested that the OCC revise the interim final rule to accommodate state-chartered banks that are required to comply with the OCC's regulations under 12 CFR 9.18, either by reason of the Internal Revenue Code, state law, or a CIF's written plan. In particular, the commenters expressed concern that state-chartered banks that are required to comply with 12 CFR 9.18 would be unable to comply with the requirement for OCC approval. Accordingly, commenters suggested that the exception to the standard withdrawal period be revised to allow for notice or disclosure instead of requiring approval, provided the interim final rule's enumerated conditions were satisfied. Alternatively, the commenters suggested the OCC clarify the application of the interim final rule to state-chartered banks.

The OCC uses the review and approval process to assess, among other things, current market conditions, the number and dollar amount of account withdrawals received, whether the bank satisfies the enumerated conditions, whether additional conditions are necessary or appropriate, and the bank's efforts to satisfy withdrawal requests. Accordingly, and because the OCC does not determine requirements for non-OCC-regulated institutions, the OCC is

not revising the approval requirement in this final rule. However, the OCC clarifies that it would not expect a state-chartered bank to request OCC approval to extend its withdrawal period, nor does the OCC have the authority to approve a request received from a state-chartered bank.

Commenters also objected to the requirement that, in order for a bank to receive an exception to the standard withdrawal period, the bank's board of directors, or a committee authorized by the board of directors, must "commit that the bank will act upon any withdrawal request as soon as practicable." In particular, commenters raised concerns that the term "commit" in this context was ambiguous and raised compliance concerns. In response to this comment, the OCC is revising this condition, as described in the subsequent section.

One commenter raised concerns with the requirement that the bank's board of directors, or a committee authorized by the board of directors, "determine that, due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants." The commenter argued that the conditions set by the interim final rule should be aligned with past OCC guidance and that a bank should be able to avail itself of the exception to the standard withdrawal period if it has "valid reasons" or if the extension is in the best interest of the fund's participants, rather than having to prove that the exception is necessary to "preserve the value of the fund's assets." The OCC believes that a narrower and more specific requirement is necessary to avoid ambiguity and that it provides more concrete support for the conclusion that an extension to the standard withdrawal period would be in the interest of fund participants. Accordingly, the OCC is not revising this requirement.

This commenter also requested that the OCC clarify the number of submissions to the OCC required for the exception to the withdrawal period. Namely, the commenter suggested that the OCC clarify that a bank may submit a single approval request to the OCC for a one-year extension to the standard withdrawal period that would cover any and all account withdrawal requests that the bank has received or may receive in the future in the given year. The commenter suggested that a bank should be able to request additional extensions even if it has not yet received additional redemption requests.

In response to this comment, the OCC is clarifying that a bank may submit a single request for OCC approval covering any account withdrawal requests that were received prior to the bank's submission to the OCC. A bank is not required to prepare different submissions for every account withdrawal request received. However, the OCC would not approve an application to extend the withdrawal period in connection with account withdrawal requests that have not yet been received by the bank. Under the standard withdrawal period, a bank may withdraw an account from a CIF up to one year after the date on which notice was required, if permitted by the CIF's written plan. Approving an application with respect to future withdrawal requests would require the OCC to make a determination, using incomplete information, as to an extended time horizon over which conditions may change.

IV. Final Rule

This final rule adopts as final the changes made by the interim final rule, but revises, in response to comments received, one of the enumerated conditions for extending the standard withdrawal period. As described above, in order to receive an exception to the standard withdrawal period, a bank's board of directors (or a committee authorized by the board of directors) must commit that the bank will act upon any withdrawal request as soon as practicable. Pursuant to this final rule, the OCC is revising this condition to read, "The bank's board of directors, or a committee authorized by the board of directors, represents that the bank will act upon any withdrawal request as soon as practicable and consistent with fiduciary duties." The OCC believes that the revised condition accomplishes its intended purpose without imposing unintended legal and compliance risk.

V. Administrative Law Matters

A. Administrative Procedure Act

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The OCC issued the August 13, 2020, interim final rule without notice and comment based on concerns that the disruption and stress in the real estate markets and other markets for not readily marketable assets resulting from the outbreak of the COVID-19

emergency, coupled with requiring a bank to withdraw an account within the standard withdrawal period, could undermine the ability of a bank to realize an appropriate value for CIF assets and be harmful in preserving the value of the CIF's assets for the benefit of fund participants. Accordingly, the OCC found that the public interest was best served by implementing the interim final rule immediately upon publication in the **Federal Register**.

The effective date of these corrections is May 26, 2021. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. This final rule implements one change relative to the August 13, 2020, interim final rule. The change is being made in response to a commenter and is intended to reduce ambiguity and compliance risks for banks seeking an exception under the rule. Because the severe market conditions related to the COVID-19 outbreak are ongoing as of the date of issuance of this final rule, the OCC finds that notice and public procedure is contrary to the public interest and that good cause exists for dispensing with the delayed effective date requirement.

B. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.⁷ If a rule is deemed a "major rule" by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁸

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁹

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule contained reporting requirements under the Paperwork Reduction Act. With the OCC's approval, and if certain conditions are satisfied, a bank may withdraw an account from a collective investment fund up to one year after the end of the standard withdrawal period. In addition, a bank may request that the OCC approve an extension beyond the one-year extension period, if certain conditions are satisfied. Extensions past the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period. OMB provided emergency PRA approval for the interim final rule. Renewal of the emergency approval is currently underway.

Title of Information Collection: Fiduciary Activities.

OMB Control No.: 1557–0140.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 4.

Total estimated annual burden: 220 burden hours.

Comments continue to be invited on:

a. Whether the collections of information are necessary for the proper performance of the OCC' including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹⁰ requires an agency to consider

whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹¹ The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the OCC determined for good cause that general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore the OCC did not issue a notice of proposed rulemaking prior to issuing the August 13, 2020, interim final rule. Because the agency did not publish a notice of proposed rulemaking, the OCC concludes that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to this final rule. Nevertheless, when issuing the August 13, 2020, interim final rule, the OCC requested feedback on ways that the OCC could reduce any potential burden of the interim final rule on small entities. No comments were received in response to this request.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),¹² in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.¹³ For the reasons described above, the OCC finds good cause exists under section 302 of

¹¹ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

¹² 12 U.S.C. 4802(a).

¹³ 12 U.S.C. 4802.

⁷ 5 U.S.C. 801 *et seq.*

⁸ 5 U.S.C. 801(a)(3).

⁹ 5 U.S.C. 804(2).

¹⁰ 5 U.S.C. 601 *et seq.*

RCDRIA to publish the final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁴ requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. In light of this requirement, the OCC has sought to present the final rule in a simple and straightforward manner. The OCC invited comment at the interim final rule stage on whether there were additional steps the OCC could take to make the rule easier to understand. No comments were received in response to this request.

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC found good cause to dispense with notice and comment for this final rule, the OCC concludes that the requirements of UMRA do not apply.

List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, the interim final rule amending 12 CFR part 9 that was published at 85 FR 49229 on August 13, 2020, is adopted as final with the following change:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

■ 2. Section 9.18 is amended by revising paragraph (b)(5)(iii)(C)(4) to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(5) * * *

(iii) * * *

(C) * * *

(4) The bank’s board of directors, or a committee authorized by the board of directors, represents that the bank will act upon any withdrawal request as soon as practicable and consistent with its fiduciary duties; and

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2021–11130 Filed 5–25–21; 8:45 am]

BILLING CODE 4810–33–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 741 and 746

RIN 3133–AF29

Derivatives

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the NCUA’s Derivatives rule. The Board issued a proposed Derivatives rule at its October 2020 meeting. This final rule will modernize the NCUA’s Derivatives rule and make it more principles-based, while retaining key safety and soundness components. The changes contained herein will provide more flexibility for federal credit unions (FCUs) to manage Interest Rate Risk (IRR) through the use of Derivatives. The Board is finalizing the rule largely as proposed, except for a few changes to various sections based on comments received. Such changes include permitting written options that comply with this final rule and amending the collateral requirements for cleared Derivatives. In addition, the Board is not finalizing a proposed change that would have required all Counterparties to be domiciled in the United States.

DATES: This rule is effective June 25, 2021.

FOR FURTHER INFORMATION CONTACT:

Policy: Tom Fay, Director of Capital Markets, Office of Examination and Insurance or Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance. **Legal:** Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Tom Fay can be reached at (703) 518–1179, Rick Mayfield can be reached at (703) 518–6501, and Justin Anderson can be reached at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

At its October 2020 meeting, the Board issued a proposed rule intended to modernize the NCUA’s Derivatives rule at subpart B to 12 CFR part 703 by moving to a principles-based approach.¹ The proposed rule included, among other things, amendments to:

- Streamline the application process and exempt certain FCUs from the requirement to submit an application;
- remove regulatory limits on the amount of Derivatives an FCU can enter into;
- remove permissible Derivatives types in favor of a characteristic-based approach; and
- reorganize rules related to loan pipeline management.

As discussed later in this preamble, the Board is finalizing the rule largely as proposed. However, in response to comments received, the Board is making a few regulatory changes and clarifying several items.

II. Final Rule and Public Comments on the Proposed Rule

The Board received 17 comments from a variety of sources, including: Natural person credit unions, a financial advisor, credit union trade associations and leagues, brokers and introducing agents, and one anonymous source. All of the comments received by the Board supported the proposal and the NCUA’s proposed principles-based approach to Derivatives. Most commenters, however, did request at least one change or clarification. The following is a summary of the requested changes and clarifications, organized by topic, and responses to the same.

A. Requirement To Submit an Application

Eight commenters addressed various aspects of the proposed application and notification structure. For ease of reference, each topic is discussed separately.

1. Asset Threshold

Three commenters disagreed with the proposed \$500 million asset size threshold required to qualify for an exemption from the requirement to submit an application for Derivatives authority. These commenters argued that an asset threshold is an arbitrary number that does not accurately reflect an FCU’s ability to safely engage in Derivatives. One commenter stated that it is possible that FCUs below the NCUA’s proposed threshold may have the requisite infrastructure to safely engage in Derivatives. Two of the

¹⁴ 12 U.S.C. 4809.

¹ 85 FR 68487, 68495 (Oct. 29, 2020).

commenters sought an outright removal of the proposed asset threshold; the third commenter sought removal or a reduction of the amount of the threshold.

The Board is not making any changes to the requirements related to the asset threshold that determines which FCUs must submit an application for Derivatives authority. As stated in the proposal, the asset threshold aligns with the definition of “complex credit union” in the NCUA’s risk-based capital (RBC) rule.² The Board chose an asset threshold of \$500 million for the RBC rule after careful consideration of the activities and volume of activities of credit unions at certain asset thresholds. As such, the Board believes the RBC asset threshold is a valuable demarcation line above which it is reasonable to expect FCUs will have the required infrastructure to safely engage in Derivatives. This is further supported by the Board’s experience in reviewing FCU applications since the inception of the current Derivatives rule. A review of Derivatives applications under the current rule confirms that FCUs greater than \$500 million in assets generally possess the management expertise and required infrastructure to support a Derivatives program.

The Board notes that it did receive a small number of applications, under the current rule, from FCUs with assets under \$500 million. While these FCUs met the requirements of the current rule, the Board believes this small group of FCUs may not be representative of the capabilities of all FCUs under \$500 million in assets. As such, the Board does not believe this small number of FCUs supports lowering the \$500 million threshold. In addition, the Board notes that this final rule does not bar FCUs under the asset threshold from receiving Derivatives authority. As discussed in the next paragraph, such an FCU may receive Derivatives authority after completing an application that demonstrates it can safely manage a Derivatives program.

As commenters stated, it is possible that an FCU under \$500 million may have the requisite infrastructure to safely engage in Derivatives. While the Board agrees with the commenters that an FCU with total assets under \$500 million may have the requisite infrastructure to support Derivatives, those FCUs may not be representative of all FCUs with total assets under \$500 million. However, this final rule provides all FCUs with total assets under \$500 million the ability to use Derivatives by retaining the provisions

of the proposed rule, which require that these FCUs apply for Derivatives authority consistent with § 703.108(b) and demonstrate the requisite infrastructure to safely engage in Derivatives.

2. Change in Condition

One commenter raised a concern and a question with the proposed requirement that an FCU have a Management CAMEL component rating of 1 or 2 to forego submitting an application for Derivatives authority. This commenter’s concern and question focused on a scenario where an FCU receives approval for Derivatives authority, but its management component later falls below the required management rating. Specifically, the commenter stated that it:

... disagrees with the proposal to require that a credit union, previously meeting the requirements to engage in derivatives, cease entering into new derivatives in the event the Management CAMEL component rating is downgraded below 2. The Management CAMEL component rating can be downgraded for reasons not related to the credit union’s management of its derivative program. Prohibiting the use of an effective tool to manage interest rate risk would have a destabilizing impact to the credit union especially when the derivative activity is subject to the existing derivative restrictions ensuring safety and soundness.

Separately, but related, this commenter also questioned how the aforementioned scenario would be applied in the case of an FCU that received approval under the current Derivatives rule and is grandfathered under this final rule (Grandfathered FCU). Specifically, this commenter asked:

Is the NCUA’s intent that said credit unions, if downgraded to a Management CAMEL component rating below 2, are also required to cease further derivative transactions until receiving approval to a newly submitted application? Said credit unions have already taken the step of demonstrating the quality of their derivative programs, and those programs are reviewed on a regular basis by the NCUA.

The Board appreciates these comments and in the following part of this document will clarify several different scenarios related to an FCU failing to comply with the requirements to forgo an initial application. In addition to the ensuing clarifying discussion, the Board, as discussed later in this section, is also making changes to § 703.108(d) of this final rule to ensure the regulatory text is clear and transparent.

As discussed in the preamble to the proposed rule³ and the accompanying rule text, § 703.108(a) states that an FCU is not required to apply for Derivatives authority if it has assets of at least \$500 million and its most recent Management CAMEL component rating is a 1 or 2. The Board believes clarification is warranted on how these requirements relate to § 703.108(d). Specifically, § 703.108(d) requires an FCU to immediately cease entering into any new Derivatives and notify the applicable Regional Director if the FCU experiences a negative change in condition such that it no longer meets the requirements discussed above or, if applicable, renders its approved application inaccurate.

The Board notes that in any instance in which an FCU, not subject to an active application under § 703.108(b), no longer meets the requirements in § 703.108(a), such FCU would need to immediately cease entering into new Derivatives transactions and notify the applicable Regional Director. An FCU required to cease entering into Derivatives may not continue entering into Derivatives transactions until it receives written notification from the applicable Regional Director that it is permitted to do so. For clarification, the cessation and notification discussed in the prior sentences would apply in any of the following circumstances:

1. A Grandfathered FCU’s Management CAMEL component rating drops to a 3, 4, or 5, or is a 3, 4, or 5 as of the effective date of this final rule; and/or the FCU’s assets drop below \$500 million or are below \$500 million as of the effective date of this final rule;

2. An FCU that was not required to submit an application for Derivatives authority under this final rule, and no longer meets either or both of the requirements in § 703.108(a); and

3. An FCU that was required to submit an application under § 701.108(b), but later meets the requirements in § 703.108(a) and then subsequently fails to meet the requirements in § 703.108(a).

Under the first scenario above, a Grandfathered FCU would, under the current Derivatives rule, already be prohibited from entering into new Derivatives transactions if its Management CAMEL component rating is a 3, 4, or 5. Under this final rule, such FCU would be remain prohibited from entering into new Derivatives transactions. Unlike the current rule, however, such FCU would not be automatically barred from continuing to use Derivatives until its management rating met the regulatory standard. Rather, this final rule provides the

² 83 FR 55467 (Nov. 6, 2018).

³ 85 FR 68487, 68495 (Oct. 29, 2020).

Regional Director with discretion to evaluate the reasons for the lower management rating and determine if the FCU can safely continue to use Derivatives. The Board notes that this flexibility will aid FCUs that have a Management CAMEL component rating of 3, 4, or 5 for reasons unrelated to the FCU's ability to safely use Derivatives.

Scenario one, described above, would also apply to any Grandfathered FCU that, as of the effective date of this final rule, has assets below the \$500 million threshold required in § 703.108(a) of this final rule.

Under scenario two above, any FCU that obtains Derivatives authority without applying, because the FCU met the requirement in § 703.108(a), would be required to cease entering into new Derivatives transactions and notify the applicable Regional Director if such FCU ever failed to continue meeting the aforementioned requirements. The required cease and notify procedures would apply to any instance in which the FCU fails to meet the requirements of § 703.108(a), including a situation where the FCU fails to meet one or both requirements, subsequently meets those requirements, and later falls out of compliance again. The Board notes that the cease and notify procedures in § 703.108(d) are not an absolute bar to continuation of Derivatives transactions. Rather, the procedures provide an opportunity for the Regional Director to evaluate the condition of the FCU and determine if it is safe and sound for the FCU to continue using Derivatives. To that end, the Board notes that this final rule provides for more flexibility than the current rule.

Finally, in scenario three the Board seeks to clarify two distinct points:

- First, an FCU that is required to apply for Derivatives authority under this final rule that subsequently meets the requirements of § 703.108(a) will, as of the date of meeting such requirements, no longer be bound by the terms of its application. Instead, such FCU will be subject only to the terms of this final rule and any future amendments made thereto. To ensure the final rule reflects this clarification, as further discussed later in this section, the Board is making minor clarifications in the final rule regulatory text.

- Second, the Board notes that such FCU, discussed in the preceding sentences, that fails to continue to meet the requirements in § 703.108(a) will be required to undertake the same cease and notify procedures as outlined above. Such FCUs will not automatically be required to reapply. However, as for all three scenarios, the Regional Director may exercise any

remedy he or she sees fit for an FCU that is no longer in compliance with § 703.108(a) or its approved and still in force application. Such action could include, but is not limited to, revocation of authority or a required application for continued authority.

To effectuate the clarifications discussed in this section of the preamble, the Board has reorganized and amended the rule text in § 703.108(d). Specifically, the Board has divided this section into two types of changes in condition: (1) A negative change in condition that may require remedial action by the applicable Regional Director; and (2) a positive change in condition such that an FCU that applied for Derivatives authority is no longer subject to such application. The Board believes this reorganization will make this section of the rule clearer and more user friendly without introducing any substantive amendments. In addition, the Board is also clarifying when, after a negative change in condition, an FCU may begin entering into Derivatives transactions again. Specifically, as discussed earlier in this section of the preamble, this change will clarify that an FCU may not continue entering into Derivatives transactions until notified in writing by the applicable Regional Director. In the proposed rule, the Board stated that an FCU subject to these cease and notify procedures could choose to apply for Derivatives authority under 703.108(b). While the Board was clear that applying was something an FCU *could* do, the Board intended this to be but one option for the continued use of Derivatives. The Board's intention in the proposed rule was that if an FCU chose not to apply for Derivatives authority, after being subject to the cease and notify procedures, such FCU would not be permitted to resume using Derivatives until notified by its Regional Director. This is further supported by the notion that the cease and notify procedures also apply to an FCU that is in violation of its approved application, and the fact that the proposed rule provided the Regional Director with remedial actions. As such, it was always the Board's intention that there would be notification back to an FCU subject to the cease and notify procedures. The Board, however, believes it could have been clearer with respect to this notification from the Regional Director. As such, the Board is taking this opportunity to be more clear and fully transparent. Such change is not intended to be substantive in any way.

3. Timing of Approval

One commenter requested a time limit for approval if an FCU is required to submit an application. This commenter stated that:

A regulation with no time bar and an open-ended invitation to request additional information could needlessly slow credit unions seeking to gain access to derivatives responsibly and as part of a risk reducing strategy. In our experience, such a review without a time limit can be frustrating to a credit union's proper planning.

The Board is retaining the provisions of the proposed rule without any time limit in approving an FCU's Derivatives application. The Board notes that the current rule does not include any time limit for the NCUA's approval. The Board believes that NCUA staff should have adequate time to review an FCU's Derivatives application to ensure the FCU has the requisite infrastructure and can safely manage a Derivatives program. The Board's experience with the current rule is that the timing of approvals for FCU applications was on average less than 100 days from the receipt of the application and believes that, given the changes to the asset threshold for notifications and the expected modifications to improve the application requirements, the timing of approval would be similar, if not shorter.

4. Timing of Notification

Finally, two commenters addressed the proposed requirement for a credit union to submit notification to the NCUA within five business days of entering into its first Derivatives transaction. One commenter requested an extension of the time-period to submit notification from 5 days to 7–10 days. This commenter stated that a longer notification period would provide flexibility for uncontrollable and unforeseen operational or marketplace delays. The other commenter requested that the NCUA not apply the notification requirement to federally insured, state-chartered credit unions (FISCUs) that are chartered in states that require preapproval by, or notification to, the state regulator. This commenter stated that requiring notification to the NCUA for these FISCUs would create an inefficient redundancy. To further streamline the application process, this commenter requested an exemption from the notification requirement for the aforementioned FISCUs.

The Board believes that replacing the application requirements for a qualified FCU with a required notification within five days after entering into its first

Derivative transaction is a reasonable compromise. Derivatives can be complex and risky transactions, and a prompt notification will allow the applicable Regional Director to efficiently manage examination resources.

The Board also believes that the current burden to a FISCU is unchanged as the FISCU is only notifying the applicable Regional Director after entering into its first Derivative transaction compared to the current requirement of notifying the Regional Director at least 30 days before it begins engaging in Derivatives.

The Board therefore is retaining the provisions of the proposed rule for the timing of notification to five days after entering into its first Derivative transaction.

B. Collateral Requirements

Three commenters addressed the proposed collateral requirements for cleared Derivatives. All three commenters disagreed with the NCUA specifying acceptable collateral for cleared Derivatives. One commenter stated that the current Derivatives rule does not have collateral requirements; rather, the current rule relies on the FCU to have systems in place to effectively manage collateral. Further, this commenter stated that for cleared Derivatives, having collateral requirements would create a parallel structure with the collateral requirements of the clearinghouse. This commenter argued that this parallel structure may lead to confusion and/or unnecessary reviews to ensure the FCU's transaction is compliant with both the clearinghouse's requirements and the NCUA's regulation. The other two commenters that addressed this topic echoed the previous statements regarding the inefficiency and unintended consequences that may occur if the NCUA mandates specific collateral, particularly for cleared Derivatives.

In the proposal, the Board noted the rule could be simplified by creating one collateral requirement for both cleared and Non-cleared Derivatives. The Board asked if this approach could cause unintended consequences. Commenters indicated that one collateral standard for cleared Derivatives and Non-cleared Derivatives could create problems for FCUs using cleared Derivatives. Based on comments and further analysis, the Board will not implement collateral requirements for cleared Derivatives. Rather, the final rule only requires specific collateral types for Non-cleared Derivatives, otherwise collateral requirements for cleared derivatives are

subject to the clearinghouse requirements. The Board notes that the collateral requirements for Non-cleared Derivatives are the same requirements included in the proposed rule. As such, the Board is only changing which transactions are subject to those requirements.

The Board believes that the distinction between cleared versus Non-cleared for collateral requirements is consistent with safety and soundness and will prevent any inefficiencies and unintended consequences that could be caused by mandating specific collateral requirements for cleared Derivatives.

C. Counterparties

Two commenters addressed the requirement that all Counterparties be domestic entities (domiciled in the United States). One commenter disagreed with the NCUA limiting permissible Counterparties to those that are domestic. This commenter stated that there is no comparable limitation by the Commodity Futures Trading Commission (CFTC). The commenter went on to point out that "there are dozens of authorized swap dealers that are not U.S. domiciled." This commenter agreed that all FCU Derivatives transactions should be subject to U.S. law, but argued that this can be accomplished through the legal terms of the Derivatives agreement, requiring the transaction be tied to Domestic Interest Rates, denominated in dollars, and subject to U.S. regulation and law. The second commenter stated that the term "domiciled" could lead to confusion, as there are multiple interpretations of this term. This commenter stated that, alternatively, the NCUA "should consider expanding the definition to include 'U.S. Branch Offices of foreign-based Swap Dealers' or 'any U.S. registered Swap Dealer,' or explicitly addressing the prohibition to transactions with these entities in the final rule's commentary."

After consideration of the comments, the Board is declining to finalize the proposed change that would require all Counterparties to be domiciled in the United States. As such, the current Counterparty requirements will be effective for the final rule. In this final rule, the Board has included the current Counterparty requirements and associated definitions. The current rule allows for Swap Dealers, Introducing Brokers, and/or Futures Commission Merchants that are current registrants of the CFTC to be Counterparties for exchange-traded and cleared Derivatives. For Non-cleared Derivatives, the current rule allows for

registered CFTC Swap Dealers to be the Counterparty.

As part of retaining the current rule's Counterparty requirement for cleared/exchange-traded and Non-cleared Derivatives, the Board will retain the following definitions from the current rule:

- Counterparty;
- Derivatives Clearing Organization;
- Futures Commission Merchant;
- Introducing Broker;
- Non-cleared; and,
- Swap Dealer.

In retaining the Counterparty requirements of the current rule, the Board is deleting the definition of Domestic Counterparty as proposed.

D. Liquidity Review

Three commenters requested clarification on the liquidity review required in the proposed rule. These commenters suggested that the NCUA should allow the aforementioned review to be part of the FCU's overall liquidity review, rather than requiring a separate liquidity review for an individual product type. While the Board is not making any rule text changes related to an FCU's liquidity review, the Board does believe it is necessary to clarify its expectations related to the same. The requirement to conduct a liquidity review as part of the operational support requirements in § 703.106(b)(5) is not intended to require a separate liquidity analysis for Derivatives. Rather, it is permissible for Derivatives be part of the more comprehensive liquidity risk management processes required in part 741 of the NCUA's regulations.⁴

E. Maturity

Three commenters requested that the NCUA remove the 15-year maturity limit on Derivatives. Commenters stated that removing this limit would provide additional flexibility and not subject FCUs to a one-sized fits all approach.

For the reasons stated in the proposal,⁵ the Board continues to believe that the 15-year maturity limit allows FCUs to effectively hedge various points of the yield curve for longer-term assets like mortgages, while preventing an excessive exposure to very long Derivative maturities. As such, the Board is not making any amendments to this section of the rule.

F. Written Options

While the proposed rule moved toward a principles-based approach, the Board explicitly proposed to prohibit an FCU from using written options. This

⁴ 12 CFR part 741.

⁵ 85 FR 68487, 68491 (Oct. 29, 2020).

prohibition is included in the current rule, where FCUs are only permitted to purchase Derivatives. In continuing this prohibition, the Board was concerned with the asymmetric return profile of written options and was also not aware of any safe uses of written options for managing IRR. To garner more information on the use and risk of written options, the proposed rule included a specific request for comments on the possibility of the Board permitting written options in a final Derivatives rule. Specifically, the Board asked for comments on whether FCUs should be able to engage in written options to manage IRR, and specific scenarios where a written option could be used to manage IRR.⁶ In response, five commenters stated that the Board should not prohibit an FCU from engaging in written options. Of these commenters, one requested clarification on the NCUA's definition of a written option, and two others provided detailed examples of transactions where a written option could be both beneficial and safe and sound.

After consideration of the comments and further analysis, the Board is removing the proposed prohibition on written options. As such, this final rule permits an FCU to enter into written options, but only if such options are used to manage IRR. As a result of removing the prohibition on written options and for increased clarity in the rule text, the Board is adding a new § 703.103(a)(1) restating a mandatory characteristic in that Derivatives can only be used for the purpose of managing IRR. The Board is adding this characteristic to reinforce the principle that all Derivatives, including written options, must only be used for the management of IRR.

As part of the Board's analysis in considering written options as a permissible Derivative for FCUs, the Board reviewed the risk profile and potential uses of written options. An option contract entitles the option purchaser the right, but not the obligation, to buy, sell, or enter into a commitment with a Counterparty including specific terms on interest rates or prices at a specified date, depending on the form of the option. The option purchaser will pay a premium upfront for this right. The seller or writer of an option, when not offsetting an existing purchased option, is the originator of an option contract exposure who, in exchange for receiving the premium, is subject to the right

afforded to the purchaser in exercising the terms of the contract.

The risk profile of an interest rate option, whether purchased or written, is asymmetric. This means the payment(s) on the option can exceed the premium paid or received for the option. With a written option, the seller of the written option would receive a premium and would generally be obligated to make payments to the purchaser if conditions are met. For example, the seller of a written interest rate cap would be required to make payments to the purchaser if the reference rate is greater than the rate on the interest rate cap contract. With interest rate options, this payment generally behaves similar to the required payments on other interest rate Derivatives. For example, the cashflow payment profile of a sold interest rate cap can be compared to a receive-fixed, pay-floating interest rate swap with the same notional and strike/swap rate, which is permissible transaction types for FCUs. One commenter pointed out that a sold interest rate cap, combined with a purchased interest rate floor, would behave almost identical to an interest rate swap with the same strike/swap rates and the same maturities. By permitting written options for managing IRR, FCUs could enter into an exposure similar to a receive-fixed, pay-floating swap transaction more customized to the FCUs balance sheet needs.

The Board notes that written options can also be used to reduce the costs associated with managing IRR. Such cost reduction can be achieved by, among other things, offsetting the purchase of another Derivative or reducing its exposure to such Derivative.

In summary, the Board has determined that the use of written options provides additional flexibility for FCUs for the purpose of managing IRR. However, the Board would like to emphasize that any written option by an FCU would need to be for the purpose of managing IRR. The FCU must be able to demonstrate how the written option, on its own or combined with other Derivatives, is being used to manage interest rate risk.

Related to the removal of the prohibition of written options, the Board is removing the definitions of Interest rate cap, Interest rate floor and Written options from the final rule. The Board notes the specific product definitions for options are not needed given the prohibition on written options has been removed from the final rule.

G. Pipeline Management

The Board proposed to streamline sections of current part 703 on when an FCU may enter into transactions to manage interest rate exposure in its loan pipeline. The proposed rule removed the reference to specific product types for loan pipeline management and expanded pipeline management to all loans. Both of these changes are consistent with the principals-based approach the Board implemented in this rule. In making this change in the proposal, the Board asked if loan pipeline management should be limited to mortgage loans. The Board asked this to allow stakeholders the opportunity to provide input on this expansion of the loan pipeline authority. Both commenters on this question stated NCUA should not restrict pipeline management to only mortgage loans. These commenters stated that pipeline management has value for managing IRR for all types of loans, not just mortgages.

The Board agrees and is retaining this portion of the rule as proposed.

H. Regional Director Authority

Three commenters addressed the ability of a Regional Director to prohibit an FCU from continuing to enter into Derivatives transactions. All three commenters found the proposed authority to be overly broad. One commenter noted that under the proposed rule, a Regional Director could, for any reason, prohibit an FCU from continuing to use Derivatives. This commenter requested that a Regional Director's authority to prohibit the use of Derivatives be directly related to Derivatives activity. Further, one commenter requested that any prohibition on the continued use of Derivatives be accompanied by a written statement to that effect and the ability to appeal such decision, under part 746 of the NCUA's regulations.⁷

The Board believes the level of Regional Director authority is appropriate. The Board notes, given the complexity of Derivatives, it is necessary to provide the Regional Director with broad discretion to allow him or her to evaluate an FCU and, if necessary, take remedial actions to address unsafe or unsound conditions that are caused by, related to, or could be exacerbated by the continued use of Derivatives.

The Board notes that such discretion will make this final rule more flexible than the current Derivatives rule. As discussed previously in this document, under the current rule, if an FCU falls

⁶ *Id.* at 68492.

⁷ 12 CFR part 746.

out of compliance with the rule or its approved application, then the FCU must cease all Derivatives activity until it comes back into compliance. In some instances, an FCU may fall out of compliance with the current rule for reasons completely unrelated to its Derivatives activity; for example, an FCU that has its management rating lowered to a 3 for reasons unrelated to its ability to manage Derivatives. In this example, under the current rule, this FCU would be required to achieve a management rating of at least 2 before it could begin entering into Derivatives again. Conversely, under this final rule, the Regional Director could evaluate the FCU's change in condition, and might allow it to continue utilizing Derivatives if he or she determines that the change in condition has not impacted the FCU's ability to manage its Derivatives program. As such, the Board is not making any changes in response to these comments.

I. Monthly Reporting

Three commenters addressed the requirement that an FCU engaging in Derivatives submit monthly reports to the FCU's senior management and, if applicable, asset liability committee. One commenter requested clarification on the level of specificity in the required reporting. Two other commenters recommended that the NCUA explore the sufficiency of less frequent reporting.

As stated in the preamble to the proposed rule,⁸ the Board believes that retaining these reporting requirements is essential to FCUs maintaining strong internal controls related to Derivatives, given the principles-based approach of this proposed rule. The Board also believes that the proposed reporting requirements are less burdensome to FCUs, because they are less prescriptive, while ensuring the proper FCU officials receive reports that are necessary to oversee an FCU's Derivatives program. Therefore, the Board is retaining the reporting requirements included in the proposed rule.

J. Derivative Transactions With Commercial Borrowers

Two commenters encouraged the Board to permit FCUs to enter into interest rate swaps with commercial borrowers. These commenters stated that these transactions would help both the FCU and commercial borrowers while addressing the Federal Credit Union Act's (FCU Act) prohibition on prepayment penalties. The Board is

declining to permit this type of transaction for two reasons.

First, the Board believes it is highly unlikely that a commercial borrower an FCU does business with will be regulated by the CFTC consistent with the Counterparty requirement in § 703.104(b) of this final rule. The Board intentionally included the Counterparty requirement in § 703.104(b) of the rule to ensure all Derivative counterparties are CFTC-regulated. The Board believes allowing non-CFTC regulated counterparties would increase the risk of Derivatives and potentially create safety and soundness issues for the FCU.

Second, the Board believes that allowing FCUs to enter into an interest rate swap with commercial borrowers would equate to a circumvention of the FCU Act. The FCU Act prohibits prepayment penalties,⁹ and allowing an FCU to enter into interest rate swap may require the commercial borrower to make a payment on the interest rate swap if they prepay the commercial loan. This payment on the interest rate swap would behave similar, if not identical, to a prepayment penalty. As such, the Board is retaining the prohibition on these types of transactions.

K. USD LIBOR

The Board is retaining the proposed provisions of § 703.103 for requirements related to the characteristics of permissible IRR Derivatives, including the provision that a Derivative contract must be based on Domestic Interest Rates or the USD London Interbank Offered Rate (LIBOR). The Board acknowledges the March 5, 2021, announcement by the Intercontinental Exchange Benchmark Administration, which publishes the USD LIBOR rate settings, that it will cease the publication of all USD LIBOR rate settings by June 30, 2023. Accordingly, the Board will consider revisions to this subpart after the cessation of the USD LIBOR.

III. Regulatory Procedures

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. In accordance

with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133-0133.

B. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This final rule does 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. The NCUA has, therefore, determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

C. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by § 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." The NCUA does not believe this rule is a "major rule" within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA submitted this final rule to the Office of Management and Budget for it to determine if the final rule is a "major rule" for purposes of SBREFA. The Office of Management and Budget determined the final rule was not a major rule. The NCUA also will file all appropriate reports.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory

⁸ 85 FR 68487, 68490 (Oct. 29, 2020).

⁹ 12 U.S.C. 1757(5)(A)(viii).

flexibility analysis that describes the impact of a proposed rule on small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million).¹⁰ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The NCUA certified that the proposed rule would not have a significant economic impact on a substantial number of small credit unions. The Board did not receive any comments on this section.

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 746

Administrative practice and procedure, Claims, Credit unions, Investigations.

By the NCUA Board on May 20, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board is amending 12 CFR parts 701, 703, 741, and 746 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

- 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610.

¹⁰ See NCUA Interpretive Ruling and Policy Statement 87–2, as amended by IRPS 03–2 and IRPS 15–1, 80 FR 57512 (Sept. 24, 2015).

Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

- 2. Amend § 701.21 by removing paragraph (i).

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

- 3. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.2 [Amended]

- 4. Amend § 703.2 by removing the definition of “Derivative”.
- 5. Amend § 703.14 by revising paragraph (k) and adding paragraph (l) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(k) *Loan pipeline management.* A Federal credit union may enter into the following transactions related to the management of its loan pipeline:

- (1) Interest rate lock commitments and forward sales commitments; and
- (2) Transactions to manage Interest Rate Risk, as defined in subpart B of this part.

(l) *Embedded options.* A Federal credit union may enter into embedded options not required under generally accepted accounting principles adopted in the United States (GAAP) to be accounted for separately from the host contract. Embedded options that are required, under GAAP, to be accounted for separately from the host contract, are addressed in § 703.103(b) of this part.

- 6. Revise subpart B to read as follows:

Subpart B—Derivatives

Sec.

- 703.101 Purpose and scope.
- 703.102 Definitions.
- 703.103 Requirements related to the characteristics of permissible Interest Rate Risk Derivatives.
- 703.104 Requirements for Counterparty agreements, collateral and Margining.
- 703.105 Reporting requirements.
- 703.106 Operational support requirements.
- 703.107 External service providers.
- 703.108 Notification and application requirements.
- 703.109 Regulatory violation or unsafe and unsound condition.

Subpart B—Derivatives.

§ 703.101 Purpose and scope.

(a) *Purpose.* This subpart grants Federal credit unions limited authority to enter into Derivatives only for the purpose of managing Interest Rate Risk.

(b) *Scope.* This subpart applies to all Federal credit unions. Except as

provided in § 741.219, this rule does not apply to federally insured, state-chartered credit unions.

(c) *Prior approvals.* Any Federal credit union with an active approval, under the prior version of this subpart, on June 25, 2021 is subject to the provisions of this subpart and is no longer subject to the restrictions, limits, or terms contained in the Federal credit union’s approved application.

(d) *Pending Approvals.* Any application for Derivatives authority pending on June 25, 2021, except for such applications submitted by a Federal credit union that would be subject to the requirements of § 703.108(b), is deemed to be withdrawn and such applicant is subject to the provisions of this subpart.

§ 703.102 Definitions.

For purposes of this subpart:

Counterparty means a Swap Dealer, Derivatives Clearing Organization, or exchange that participates as the other party in a derivatives transaction with a Federal credit union.

Derivative means a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Derivatives Clearing Organization has the meaning as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.

Domestic interest rates means interest rates derived in the United States and are U.S. dollar-denominated.

Earnings at Risk means the changes to earnings, typically in the short term (for example, 12 to 36 months), caused by changes in interest rates.

Economic Effectiveness means the extent to which a Derivatives transaction results in offsetting changes in the Interest Rate Risk that the transaction was, and is, intended to provide.

External Service Provider means any entity that provides services to assist a Federal credit union in carrying out its Derivatives program and the requirements of this subpart.

Futures Commission Merchant (FCM) has the meaning as defined by the CFTC in 17 CFR 1.3.

Interest Rate Risk means the current and prospective risk to a credit union’s capital and earnings arising from movements in interest rates.

Introducing Broker means a futures brokerage firm that deals directly with the client, while the trade execution is done by an FCM.

Margin means the minimum amount of eligible collateral, as defined in § 703.104(c), that must be deposited

between parties to a Derivatives transaction, as detailed in a Master Services Agreement.

Master Services Agreement means a document agreed upon between two parties that sets out standard terms that apply to all transactions entered into between those parties. The most common form of a Master Services Agreement for Derivatives is an International Swap Dealer Association Master Agreement.

Net Economic Value means the measurement of changes in the economic value of Net Worth caused by changes in interest rates.

Net Worth has the meaning specified in part 702 of this chapter.

Non-cleared means transactions that do not go through a Derivatives Clearing Organization

Regional Director means an NCUA Regional Director or the Director of the Office of National Examinations and Supervision.

Senior Executive Officer has the meaning specified in § 701.14 of this chapter and includes any other similar employee that is directly within the chain of command for the oversight of a Federal credit union's Derivatives program.

Structured Liability Offering means a share product created by a Federal credit union with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes.

Swap Dealer has the meaning as defined by the CFTC in 17 CFR 1.3.

Threshold Amount means an unsecured credit exposure that a party to a Derivatives transaction is prepared to accept before requesting additional eligible collateral, as defined in § 703.104(c), from the other party.

Trade Date means the date that a Derivatives order (new transactions, terminations, or assignments) is executed with a Counterparty.

§ 703.103 Requirements related to the characteristics of permissible Interest Rate Risk Derivatives.

(a) Under this subpart, a Federal credit union may only enter into Derivatives that have the following characteristics:

- (1) Are for the purpose of managing Interest Rate Risk;
- (2) Denominated in U.S. dollars;
- (3) Based on Domestic Interest Rates or the U.S. dollar-denominated London Interbank Offered Rate (LIBOR);
- (4) A contract maturity equal to or less than 15 years, as of the Trade Date; and
- (5) Not used to create Structured Liability Offerings for members or nonmembers.

(b) A Federal credit union may not engage in embedded options required under U.S. Generally Accepted Accounting Principles (GAAP) to be accounted for separately from the host contract.

§ 703.104 Requirements for Counterparty agreements, collateral and Margining.

To enter into Derivative transactions under this subpart, a Federal credit union must:

(a) Have an executed Master Services Agreement with a Counterparty. Such agreement must be reviewed by counsel with expertise in similar types of transactions to ensure the agreement reasonably protects the interests of the Federal credit union;

(b) Use only the following Counterparties:

(1) For exchange-traded and cleared Derivatives: Swap Dealers, Introducing Brokers, and/or FCMs that are current registrants of the CFTC; or

(2) For Non-cleared Derivative transactions: Swap Dealers that are current registrants of the CFTC.

(c) Utilize contracted Margin requirements with a maximum Margin threshold amount of \$250,000; and

(d) For Non-cleared Derivative transactions, accept as eligible collateral, for Margin requirements, only the following: Cash (U.S. dollars), U.S. Treasuries, government-sponsored enterprise debt, U.S. government agency debt, government-sponsored enterprise residential mortgage-backed security pass-through securities, and U.S. government agency residential mortgage-backed security pass-through securities.

§ 703.105 Reporting requirements.

(a) *Board reporting.* At least quarterly, a Federal credit union's Senior Executive Officers must deliver a comprehensive Derivatives report, as described in paragraph (c) of this section to the Federal credit union's board of directors.

(b) *Senior Executive Officer and asset liability or similarly functioning committee.* At least monthly, Federal credit union staff must deliver a comprehensive Derivatives report, as described in paragraph (c) of this section to the Federal credit union's Senior Executive Officers and, if applicable, the Federal credit union's asset liability or similarly functioning committee.

(c) *Comprehensive Derivatives management report.* At a minimum, the reports required in paragraphs (a) and (b) of this section must include:

- (1) Identification of any areas of noncompliance with any provision of

this subpart or the Federal credit union's policies, and the planned remediation of such noncompliance;

(2) An itemization of the Federal credit union's individual transactions subject to this subpart, the current values of such transactions, and each individual transaction's intended use for Interest Rate Risk mitigation; and

(3) A comprehensive view of the Federal credit union's risk reports, including, but not limited to, Interest Rate Risk calculations with details of the transactions subject to this subpart.

(d) *Retention requirement.* Reports required by this section must, at a minimum, be retained in accordance with the requirements in Appendix A to part 749.

(e) *Notification of noncompliance.* Notification of any noncompliance as part of the Derivatives management report required in paragraph (c)(1) of this section must be submitted to the applicable Regional Director immediately after it has been submitted to the Federal credit union's board of directors.

(f) *NCUA request.* The NCUA may, at any time, request the Derivatives management report required by paragraph (c) of this section.

§ 703.106 Operational support requirements.

(a) *Required experience and competencies.* A Federal credit union using Derivative transactions subject to this subpart must internally possess the following experience and competencies:

(1) *Board.* (i) Before entering into the initial Derivatives transaction, a Federal credit union's board members must receive training that provides a general understanding of Derivative transactions, and the knowledge required to provide strategic oversight of the Federal credit union's Derivatives program.

(ii) Any person that becomes a board member after the initial Derivatives transaction must receive the same training, updated if necessary, as required by paragraph (a)(1)(i) of this section.

(iii) At least annually after the initial Derivatives transaction, as part of the Derivatives reporting requirement in § 703.105(a), the Federal credit union's Senior Executive Officers must brief the board members on the Federal credit union's use of Derivatives to manage Interest Rate Risk.

(2) *Senior Executive Officers.* A Federal credit union's Senior Executive Officers must be able to understand, approve, and provide oversight for the Derivatives program. These individuals must have a comprehensive

understanding of how the Derivative transactions fit into the Federal credit union's Interest Rate Risk management process.

(3) *Qualified Derivatives personnel.*

To engage in the Derivative transactions, a Federal credit union must employ staff with experience in the following areas:

(i) *Asset/liability risk management.*

Staff must be qualified to understand and oversee asset/liability risk management, including the appropriate role of the transactions subject to this subpart. Staff must also be qualified to understand and undertake or oversee the appropriate modeling and analytics related to Net Economic Value and Earnings at Risk;

(ii) *Accounting and financial reporting.* Staff must be qualified to understand and oversee appropriate accounting and financial reporting for Derivatives in accordance GAAP;

(iii) *Derivatives execution and oversight.* Staff must be qualified to undertake or oversee Derivative trade executions; and

(iv) *Counterparty, collateral, and Margin management.* Staff must be qualified to evaluate Counterparty, collateral, and Margin risk as described in § 703.104 of this subpart.

(b) *Required review and internal controls structure.* To effectively manage the transactions subject to this subpart, a Federal credit union must assess the effectiveness of its management and internal controls structure. At a minimum, the internal controls structure must include:

(1) *Transaction review.* Before executing any Derivatives transaction, a Federal credit union must identify and document the circumstances that lead to the decision to execute the Derivatives transaction, specify the strategy the Federal credit union will employ, and demonstrate the economic effectiveness of the transaction;

(2) *Internal controls review.* Within the first year after commencing its first Derivatives transaction, a Federal credit union must have an internal controls review that is focused on the integration and introduction of the program, and ensure the timely identification of weaknesses in internal controls, accounting, and all operational and oversight processes. This review must be performed by an independent external unit or, if applicable, the Federal credit union's internal auditor;

(3) *Financial statement audit.* Any Federal credit union engaging in Derivative transactions pursuant to this subpart must obtain an annual financial statement audit, as defined in § 715.2(d) of this chapter, and be compliant with

GAAP for all Derivatives-related accounting and reporting;

(4) *Collateral management review.*

Before executing its first Derivative transaction, a Federal credit union must establish a collateral management process that monitors the Federal credit union's collateral and Margining requirements and ensures that its transactions are collateralized in accordance with the collateral requirements of this subpart and the Federal credit union's Master Services Agreement with its Counterparty;

(5) *Liquidity review.* Before executing its first Derivative transaction, a Federal credit union must establish a liquidity review process to analyze and measure potential liquidity needs related to its Derivatives program and the additional collateral requirements due to changes in interest rates. The Federal credit union must, as part of its liquidity risk management, calculate and track contingent liquidity needs in the event a transaction needs to be novated or terminated, and must establish effective controls for liquidity exposures arising from both market or product liquidity and instrument cash flows; and

(6) *Separation of duties.* A Federal credit union's process, whether conducted internally or by an External Service Provider, must have appropriate separation of duties for the following functions defined in subsection (a)(3) of this section:

(i) Asset/liability risk management;

(ii) Accounting and financial reporting;

(iii) Derivatives execution and oversight; and

(iv) Counterparty, collateral and Margin management.

(c) *Policies and procedures.* A Federal credit union using Derivatives, permitted under this subpart, must operate according to comprehensive written policies and procedures for control, measurement, and management of Derivative transactions. At a minimum, the policies and procedures must address the requirements of this subpart and any additional limitations imposed by the Federal credit union's board of directors. A Federal credit union's board of directors must review the policies and procedures described in this section at least annually and update them when necessary.

§ 703.107 External service providers.

(a) *General.* A Federal credit union using Derivatives may use External Service Providers to support or conduct aspects of its Derivative management program, provided:

(1) The External Service Provider, including affiliates, does not:

(i) Act as a Counterparty to any Derivative transactions that involve the Federal credit union;

(ii) Act as a principal or agent in any Derivative transactions that involve the Federal credit union; or

(iii) Have discretionary authority to execute any of the Federal credit union's Derivative transactions.

(2) The Federal credit union has the internal capacity, experience, and skills to oversee and manage any External Service Providers it uses; and

(3) The Federal credit union documents the specific uses of External Service Providers in its policies and procedures, as described in § 703.106(c) of this subpart.

(b) *Relation to § 703.106.* This section does not alleviate the responsibility of the Federal credit union to employ qualified staff in accordance with § 703.106 of this subpart.

§ 703.108 Notification and application requirements.

(a) *Notification.* A Federal credit union that meets the following requirements must notify the applicable Regional Director in writing or via electronic mail within five business days after entering into its first Derivatives transaction:

(1) The Federal credit union's most recent NCUA Management CAMEL component is a rating of 1 or 2; and

(2) The Federal credit union has assets of at least \$500 million as of its most recent call report.

(b) *Application.* A Federal credit union that does not meet the requirements of paragraphs (a)(1) and/or (2) of this section must obtain approval before engaging in Derivatives under this subpart from its applicable Regional Director, by submitting an application, that, at a minimum, includes the following:

(1) An Interest Rate Risk mitigation plan that shows how Derivatives are one aspect of the Federal credit union's overall Interest Rate Risk mitigation strategy, and an analysis showing how the Federal credit union will use Derivatives in conjunction with other on-balance sheet instruments and strategies to effectively manage its Interest Rate Risk;

(2) A list of the Derivatives products and characteristics of such products the Federal credit union is planning to use;

(3) Draft policies and procedures that the Federal credit union has prepared in accordance with § 703.106;

(4) A description of how the Federal credit union plans to acquire, employ, and/or create the resources, policies, processes, systems, internal controls, modeling, experience, and

competencies to meet the requirements of this subpart. This includes a description of how the Federal credit union will ensure that Senior Executive Officers, the board of directors, and personnel have the knowledge and experience in accordance with the requirements of this subpart;

(5) A description of how the Federal credit union intends to use External Service Providers as part of its Derivatives program, and a list of the name(s) of and service(s) provided by the External Service Providers, as described in § 703.107 of this subpart, it intends to use;

(6) A description of how the Federal credit union will support the operations of Margining and collateral, as described in § 703.104 of this subpart;

(7) A description of how the Federal credit union will comply with the accounting and financial reporting in GAAP; and

(8) Any additional information requested by the Regional Director.

(c) *Application review.* (1) After the applicable Regional Director has completed his or her review, including any requests for additional information, the Regional Director will notify the Federal credit union in writing of his or her decision. Any denials will include the reason(s) for such denial. A Federal credit union subject to paragraph (b) of this section may not enter into any Derivative transactions under this subpart until it receives approval from the applicable Regional Director. At a Regional Director's discretion, a Federal credit union may reapply if its initial application is denied.

(2) A Federal credit union that receives a denial of its application may appeal such decision in accordance with part 746 of this chapter.

(d) *Change in condition.*—(1) *Negative change in condition.* A Federal credit union that at any time, experiences a change in negative condition such that it no longer meets the requirements of paragraph (a) of this section or renders its approved application inaccurate must immediately:

(i) Cease entering into any new Derivatives; and

(ii) Notify the applicable Regional Director.

(2) *Remedial action for a Federal credit union that experiences a negative change in condition.* The applicable Regional Director may take all necessary actions, including, but not limited to, revoking a Federal credit union's authority to engage in Derivatives and/or requiring divestiture of current Derivatives. A Federal credit union subject to this paragraph may not enter into new Derivatives unless notified in

writing by the applicable Regional Director of its authority to do so.

(3) *Positive change in condition for a Federal credit union subject to paragraph (b) of this section.* A Federal credit union that is required to submit an application under paragraph (b) of this section that, at any time after approval of such application, meets the requirements of paragraph (a) of this section shall no longer be subject to the requirements included in its approved application, but will continue to be subject to the requirements of this subpart.

§ 703.109 Regulatory violation or unsafe and unsound condition.

(a) Upon determination by the applicable Regional Director, and written notice by the same, a Federal credit union that no longer meets the requirements of this subpart; if applicable, fails to comply with its approved application; or is operating in an unsafe or unsound condition must immediately stop entering into any new Derivative transactions until the Federal credit union is notified by the applicable Regional Director in writing that it is permitted to resume engaging in Derivative transactions under this subpart.

(b) If the applicable Regional Director determines a Federal credit union must take any action under paragraph (a) of this section, he or she will provide the Federal credit union with written notice including the reason(s) for such determination and the remedial actions that are required.

(c) During this period, however, the Federal credit union may terminate existing Derivative transactions. A Regional Director may permit a Federal credit union to enter into offsetting transactions if he or she determines such transactions are part of a corrective action strategy; and

(d) A Federal credit union that receives written notice under this section may appeal such determination in accordance with part 746 of the NCUA's regulations.

PART 741—REQUIREMENTS FOR INSURANCE

■ 7. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 8. Amend § 741.219 by revising paragraph (b) to read as follows:

§ 741.219 Investment requirements.

* * * * *

(b) Any credit union that is insured pursuant to title II of the Act must notify

the applicable NCUA Regional Director in writing within five business days after entering into its first Derivatives transaction. Such transactions do not include those included in § 703.14 of this chapter.

PART 746—APPEALS PROCEDURES

■ 9. The authority citation for part 746 continues to read as follows:

Authority: 12 U.S.C. 1766, 1787, and 1789.

■ 10. Amend § 746.201 by revising paragraph (c) to read as follows:

§ 746.201 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This subpart covers the appeal of initial agency determinations by a program office which the petitioner has a right to appeal to the NCUA Board under the following regulations: §§ 701.14(e), 701.21(h)(3), 701.22(c), 701.23(h)(3), 701.32(b)(5), and 701.34(a)(4), appendix A to part 701 of this chapter, appendix B to part 701 of this chapter, Chapters 1–4, §§ 703.20(d), 703.108(b), 705.10(a), 708a.108(d), 708a.304(h), 708a.308(d), 709.7, 741.11(d), and 745.201(c), subpart J to part 747 of this chapter, and § 750.6(b).

* * * * *

[FR Doc. 2021–11055 Filed 5–25–21; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2021–0228; Special Conditions No. 25–787–SC]

Special Conditions: Haeco Cabin Solutions, Boeing Commercial Airplanes Model 737–800 Airplane; Structure-Mounted Airbags

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Commercial Airplanes (Boeing) Model 737–800 airplane. This airplane, as modified by Haeco Cabin Solutions (Haeco), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is structure-mounted airbags designed to protect each occupant from serious head injury in the event of an emergency landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this

design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective May 26, 2021.

FOR FURTHER INFORMATION CONTACT: John Shelden, Human Machine Interface, AIR-626, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3214; email John.Shelden@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2020, Haeco applied for a supplemental type certificate for structure-mounted airbags in the Boeing Model 737-800 airplane. The Boeing Model 737-800 airplane, which is a derivative of the Boeing Model 737 airplane currently approved under Type Certificate No. A16WE, is a twin-engine, transport-category airplane with seating for 189 passengers and a maximum takeoff weight of 174,200 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Haeco must show that the Boeing Model 737-800 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737-800 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737-800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737-800 airplane will incorporate the following novel or unusual design features:

Airbags mounted to structure to prevent head injury.

Discussion

Haeco will install structure-mounted airbags instead of inflatable lap belts as a means to protect each occupant from serious injury in the event of an emergency landing, as required by § 25.562(c)(5), on 737-800 airplanes.

Such use of airbags to provide injury protection for the occupant is a novel or unusual feature for this airplane model, and the applicable airworthiness regulations do not contain adequate or appropriate airworthiness standards for these design features. Therefore, special conditions are needed to address requirements particular to installation of airbags in this manner.

Special conditions exist for airbags installed on seat belts, known as inflatable lap belts, which have been installed on transport airplane passenger seats. Structure-mounted airbags, although a novel design, were first introduced on Jetstream Aircraft Limited Model 4100 series airplanes, which resulted in issuance of Special Conditions 25-ANM-127 on May 14, 1997. These special conditions supplemented 14 CFR part 25 and, more specifically, §§ 25.562 and 25.785.

The structure-mounted airbag, similar to the inflatable lap belt, is designed to limit occupant forward excursion in the event of an emergency landing. These airbags will reduce the potential for serious injury, including reducing the head-injury criterion measurement defined in part 25. However, structure-mounted airbags function similarly as automotive airbags, where the airbag deploys from furniture located in front of the passenger, relative to the airplane's direction of flight, forming a barrier between the structure and occupant. Also, unlike the inflatable lap belt, the structure-mounted airbag does not move with the occupant. To account for out-of-position and brace-position occupants, the airbag is designed to conform to the curvature of the exposed structure in the head-strike zone.

Because the airbag system is essentially a single-use device, it could deploy under crash conditions that are not sufficiently so severe as to require the injury protection the airbag system

provides. Because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, a larger impact following the initial impact could render the airbag system unavailable. This potential situation does not exist with standard upper-torso restraints, which tend to provide continuous protection regardless of impact severity, or number of impacts, in a crash event. Therefore, the airbag system installation should be such that it provides protection, when it is required, by not expending its protection when it is not required. If the airbag deployment threshold is unnecessarily low, the airbag would need to continue to provide protection when an impact requiring protection occurs.

These special conditions are based upon Special Conditions 25-605-SC for the Boeing Model 787-9 airplanes equipped with B/E Aerospace Super-Diamond model business-class passenger seats and associated furniture. Additionally, the special conditions address protection of the occupant's neck and spine for the structure-mounted airbag deployment. When using the HIC15 head-injury method for airbag impacts (calculated in accordance with 49 CFR 571.208) the neck and spine limits are included as part of the allowance.

These additional conditions are based on special conditions issued previously on oblique seats. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25-21-01-SC for the Boeing Model 737-800 series airplane, which was published in the **Federal Register** on March 16, 2021 (86 FR 14387). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737-800 airplane as modified by Haeco. Should Haeco apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the

certification date is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only a certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737-800 airplanes, as modified by Haeco Cabin Solutions:

1. The applicant must demonstrate by test that the structure-mounted airbag will deploy and provide protection under crash conditions where it is necessary to prevent serious injury to a 50th percentile occupant, as specified in § 25.562. The means of protection must provide a consistent approach to energy absorption for a range of occupants, from a two-year-old child to a 95th percentile male. In addition, the following situations should be considered:

1. The seat occupant is holding an infant.
2. The seat occupant is a child in a child restraint device.
3. The seat occupant is a child not using a child restraint device.
4. The seat occupant is a pregnant woman.

a. Head-Injury Criteria

Compliance with § 25.562(c)(5) is required, except that, if the ATD has no apparent contact with the seat/structure but has contact with an airbag, a head-injury criterion (HIC) unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

b. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (e.g., an interior wall or furnishing) that does not provide a homogenous contact

surface for the expected range of occupants and yaw angles, then additional analysis or tests may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag performance, then additional analysis or separate tests may be necessary to evaluate performance.

c. Neck-Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

(1) The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

- (a) $F_{zc} = 1,530$ lb for tension
- (b) $F_{zc} = 1,385$ lb for compression
- (c) $M_{yc} = 229$ lb-ft in flexion
- (d) $M_{yc} = 100$ lb-ft in extension

(2) In addition, peak F_z must be below 937 lb in tension and 899 lb in compression.

(3) Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

(4) The neck must not impact any surface that would produce concentrated loading on the neck.

d. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609, "A Lumbar Spine Modification to the Hybrid III ATD for Aircraft Seat Tests." The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (e.g., armrests or walls) installed.

Note: Applicant must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS-ANM-100-2000-00123, "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets," dated February 2, 2000, is acceptable to the FAA.

2. The structure-mounted airbag must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly.

3. The structure-mounted airbag system must not be susceptible to

inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) likely to be experienced in service.

4. The applicant must demonstrate that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. Inadvertent deployment must not cause injury to anyone who may be positioned close to the structure-mounted airbag (e.g., seated in an adjacent seat, or standing adjacent to the airbag installation or the subject seat). Cases where a structure-mounted airbag is inadvertently deployed near a seated occupant or an empty seat must be considered.

5. Inadvertent deployment of the structure-mounted airbag during the most critical part of flight will either not cause a hazard to the airplane or is extremely improbable.

6. Deployment of the structure-mounted airbag must not introduce hazards or injury mechanisms to the seated occupant, including occupants in the brace position. Deployment of the structure-mounted airbag must also not result in injuries that could impede rapid exit from the airplane.

7. Effects of the deflection and deformation of the structure to which the airbag is attached must be taken into account when evaluating deployment and location of the inflated airbag. The effect of loads imposed by airbag deployment, or stowed components where applicable, must also be taken into account.

8. The applicant must demonstrate that the structure-mounted airbag, when deployed, does not impair access to the seatbelt- or harness-release means, and must not hinder evacuation. This will include consideration of adjacent seat places and the aisle.

9. The airbag, once deployed, must not adversely affect the emergency-lighting system, and must not block escape-path lighting to the extent that the light(s) no longer meet their intended function.

10. The structure-mounted airbag must not impede occupants' rapid exit from the airplane 10 seconds after its deployment.

11. Where structure-mounted airbag systems are installed in or close to passenger evacuation routes (other than for the passenger seat for which the airbag is installed), possibility of impact on emergency evacuation (e.g., hanging in the aisle, potential trip hazard, etc.) must be evaluated.

12. The airbag electronic system must be designed to be protected from lightning per § 25.1316(b), and high-

intensity radiated fields per § 25.1317(c).

13. The structure-mounted airbag system must not contain or release hazardous quantities of gas or particulate matter into the cabin.

14. The structure-mounted airbag installation must be protected from the effects of fire such that no hazard to occupants will result.

15. The inflatable bag material must meet the 2.5-inches-per-minute horizontal flammability test defined in 14 CFR part 25, appendix F, part I, paragraph (a)(1)(iv).

16. The design of the structure-mounted airbag system must protect the mechanisms and controls from external contamination associated with that which could occur on or around passenger seating.

17. The structure-mounted airbag system must have a means to verify the integrity of the structure-mounted airbag activation system.

18. The applicant must provide installation limitations to ensure installation compatibility between the seat design and opposing monument or structure.

Issued in Kansas City, MO, on May 21, 2021.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2021-11136 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31372; Amdt. No. 559]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules)

altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, June 17, 2021.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The

effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95 Airspace, Navigation (air).

Issued in Washington, DC, on May 19, 2021.

Thomas J. Nichols,

Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 17, 2021.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 559 effective date June 17, 2021]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3295 RNAV Route T295 Is Amended by Adding			
BANGOR, ME VORTAC	LAUDS, ME WP	2800	17500
LAUDS, ME WP	HULTN, ME WP	2500	17500
HULTN, ME WP	PRESQUE ISLE, ME VOR/DME	3000	17500
Is Amended to Read in Part			
SASHA, MA FIX	KEYNN, NH WP	4200	17500
KEYNN, NH WP	CONCORD, NH VOR/DME	5000	17500
§ 95.3312 RNAV Route T312 Is Added to Read			
HILL CITY, KS VORTAC	MOZEE, KS WP	4400	17500
MOZEE, KS WP	HUTCHINSON, KS VOR/DME	3800	17500
HUTCHINSON, KS VOR/DME	DROOP, MO FIX	3500	17500
DROOP, MO FIX	DOGWOOD, MO VORTAC	3300	17500
DOGWOOD, MO VORTAC	FARMINGTON, MO VORTAC	3400	17500
FARMINGTON, MO VORTAC	JEDPA, IL WP	2900	17500
JEDPA, IL WP	POCKET CITY, IN VORTAC	2300	17500
§ 95.3314 RNAV Route T314 Is Added to Read			
BARNES, MA VORTAC	FAIDS, MA FIX	2900	17500
FAIDS, MA FIX	PUDGY, MA FIX	2800	17500
PUDGY, MA FIX	GARDNER, MA VOR/DME	3000	17500
GARDNER, MA VOR/DME	JOHNZ, NH FIX	3500	17500
JOHNZ, NH FIX	MANCH, NH WP	*2600	17500
*2100—MOCA			
MANCH, NH WP	KHRIS, NH FIX	2300	17500
KHRIS, NH FIX	RAYMY, NH FIX	*2600	17500
*2100—MOCA			
RAYMY, NH FIX	YUKES, NH WP	2300	17500
YUKES, NH WP	KENNEBUNK, ME VOR/DME	2600	17500
§ 95.3315 RNAV Route T315 Is Added to Read			
HARTFORD, CT VOR/DME	DVANY, CT FIX	2700	17500
DVANY, CT FIX	DARTH, CT WP	2700	17500
DARTH, CT WP	WITNY, MA FIX	*3000	17500
*2500—MOCA			
WITNY, MA FIX	SPENO, MA FIX	2900	17500
SPENO, MA FIX	GARDNER, MA VOR/DME	3000	17500
GARDNER, MA VOR/DME	KEYNN, NH WP	*3600	17500
*3900—MCA KEYNN, NH WP, N BND			
KEYNN, NH WP	JAMMA, VT WP	4400	17500
JAMMA, VT WP	EBERT, VT WP	*5600	17500
*6100—MCA EBERT, VT WP, N BND			
EBERT, VT WP	MUDDI, VT FIX	6400	17500
MUDDI, VT FIX	BURLINGTON, VT VOR/DME	6000	17500
§ 95.3316 RNAV Route T316 Is Added to Read			
LAMMS, NY WP	ROOMS, NY WP	*3900	17500
*3900—MCA ROOMS, NY WP, W BND			
ROOMS, NY WP	PAYGE, NY WP	3500	17500
PAYGE, NY WP	GALWA, NY FIX	2900	17500
GALWA, NY FIX	ETZUN, NY WP	3000	17500
ETZUN, NY WP	CAMBRIDGE, NY VOR/DME	*3300	17500
*5000—MCA CAMBRIDGE, NY VOR/DME, E BND			
CAMBRIDGE, NY VOR/DME	DORIS, VT FIX	6000	17500
DORIS, VT FIX	BRATS, VT WP	*6000	17500
*4700—MCA BRATS, VT WP, W BND			
BRATS, VT WP	STRUM, NH WP	4100	17500
STRUM, NH WP	DUBIN, NH WP	*4800	17500
*4400—MCA DUBIN, NH WP, W BND			
DUBIN, NH WP	*MUGGY, NH FIX	**4000	17500
*3100—MCA MUGGY, NH FIX, W BND			
**3500—MOCA			
MUGGY, NH FIX	BASUU, NH FIX	*3000	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 559 effective date June 17, 2021]

From	To	MEA	MAA
BASUU, NH FIX	MANCH, NH WP	*2600	17500
§ 95.3391 RNAV Route T391 Is Amended by Adding			
HANCOCK, NY VOR/DME	OXFOR, NY WP	4000	17500
OXFOR, NY WP	PITCH, NY WP	3700	17500
PITCH, NY WP	GTOWN, NY WP	3800	17500
GTOWN, NY WP	POMPY, NY WP	3800	17500
POMPY, NY WP	FATUP, NY WP	*3600	17500
*3100—MCA FATUP, NY WP, SE BND			
FATUP, NY WP	SYRACUSE, NY VORTAC	2900	17500
Is Amended to Delete			
TUMPS, NY FIX	SYRACUSE, NY VORTAC	3400	17500
§ 95.3608 RNAV Route T608 Is Amended to Delete			
WOZEE, NY WP	U.S. CANADIAN BORDER	*3000	17500
*2500—MOCA			
U.S. CANADIAN BORDER	HOCKE, MI WP	*3500	17500
*2900—MOCA			
Is Added to Read			
HOCKE, MI WP	U.S. CANADIAN BORDER	*3500	17500
*2500—MOCA			
U.S. CANADIAN BORDER	WOZEE, NY WP	2400	17500
WOZEE, NY WP	CLUNG, NY FIX	2700	17500
CLUNG, NY FIX	ROCHESTER, NY VOR/DME	2500	17500
ROCHESTER, NY VOR/DME	LORTH, NY FIX	2500	17500
LORTH, NY FIX	SYRACUSE, NY VORTAC	2400	17500
SYRACUSE, NY VORTAC	STODA, NY FIX	2300	17500
STODA, NY FIX	VASTS, NY WP	3000	17500
VASTS, NY WP	LAMMS, NY WP	3400	17500
LAMMS, NY WP	NORSE, NY WP	3500	17500
NORSE, NY WP	MARIA, NY FIX	3400	17500
MARIA, NY FIX	ALBANY, NY VORTAC	3000	17500
ALBANY, NY VORTAC	WARUV, NY WP	*3100	17500
*3700—MCA WARUV, NY WP, E BND			
WARUV, NY WP	GRAVE, NY WP	*4100	17500
*4400—MCA GRAVE, NY WP, SE BND			
GRAVE, NY WP	GRISY, MA WP	5300	17500
GRISY, MA WP	WARIC, MA WP	4700	17500
WARIC, MA WP	HURLY, MA WP	3300	17500
HURLY, MA WP	GARDNER, MA VOR/DME	3000	17500
GARDNER, MA VOR/DME	GRAYM, MA FIX	3000	17500
GRAYM, MA FIX	BLATT, CT FIX	2800	17500
BLATT, CT FIX	MOGUL, CT FIX	2500	17500
MOGUL, CT FIX	YANTC, CT WP	2300	17500
§ 95.3634 RNAV Route T634 Is Added to Read			
SYRACUSE, NY VORTAC	PAGER, NY FIX	2300	17500
PAGER, NY FIX	BRUIN, NY WP	2600	17500
BRUIN, NY WP	WATERTOWN, NY VORTAC	2600	17500
WATERTOWN, NY VORTAC	U.S. CANADIAN BORDER	2000	17500
§ 95.3662 RNAV Route T662 Is Added to Read			
U.S. CANADIAN BORDER	KATAH, ME WP	*7000	17500
*4600—MOCA			
KATAH, ME WP	HULTN, ME WP	5800	17500
§ 95.3698 RNAV Route T698 Is Added to Read			
U.S. CANADIAN BORDER	HULTN, ME WP	7600	17500
HULTN, ME WP	U.S. CANADIAN BORDER	2500	17500
§ 95.3705 RNAV Route T705 Is Amended by Adding			
DANZI, NY WP	CODDI, NY FIX	4400	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 559 effective date June 17, 2021]

From	To	MEA	MAA
CODDI, NY FIX	MILID, NY FIX	4000	17500
MILID, NY FIX	LAMMS, NY WP	3800	17500
LAMMS, NY WP	USICI, NY FIX	3400	17500
FOSYU, NY WP	SRNAC, NY WP	5400	17500
SRNAC, NY WP	UUBER, NY WP	5100	17500
UUBER, NY WP	RIGID, NY WP	*5400	17500
*4800—MCA RIGID, NY WP, W BND			

Is Amended to Delete

UTICA, NY VORTAC	USICI, NY FIX	3900	17500
FOSYU, NY WP	SARANAC LAKE, NY VOR/DME	5400	17500
SARANAC LAKE, NY VOR/DME	RIGID, NY WP	5400	17500

Is Amended to Read in Part

RIGID, NY WP	PBERG, NY WP	3800	17500
PBERG, NY WP	LATTS, NY WP	3200	17500
LATTS, NY WP	U.S. CANADIAN BORDER	2900	17500

§ 95.3781 RNAV Route T781 Is Amended by Adding

U.S. CANADIAN BORDER	HULTN, ME WP	*7000	17500
*4000—MOCA			

§ 95.4000 High Altitude RNAV Routes

§ 95.4067 RNAV Route Q67 Is Amended to Read in Part

SMTHH, TN WP	TONIO, KY FIX	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
TONIO, KY FIX	HENDERSON, WV VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			

Is Amended to Delete

TONIO, KY FIX	DARYN, WV WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			

§ 95.4176 RNAV Route Q176 Is Added to Read

CIMARRON, NM VORTAC	KENTO, NM FIX	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KENTO, NM FIX	LIBERAL, KS VORTAC	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
LIBERAL, KS VORTAC	WICHITA, KS VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
WICHITA, KS VORTAC	BUTLER, MO VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BUTLER, MO VORTAC	ST LOUIS, MO VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ST LOUIS, MO VORTAC	GBEES, IN WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
GBEES, IN WP	BICKS, KY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BICKS, KY WP	HENDERSON, WV VORTAC	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
HENDERSON, WV VORTAC	OTTTO, VA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 559 effective date June 17, 2021]

From	To	MEA	MAA
§ 95.4806 RNAV Route Q806 Is Amended to Read in Part			
U.S. CANADIAN BORDER *18000—GNSS MEA *DME/DME/IRU MEA	MILLINOCKET, ME VOR/DME	*18000	45000
MILLINOCKET, ME VOR/DME *18000—GNSS MEA *DME/DME/IRU MEA	CANME, ME WP	*18000	45000
CANME, ME WP *18000—GNSS MEA *DME/DME/IRU MEA	U.S. CANADIAN BORDER	*18000	45000
§ 95.4864 RNAV Route Q864 Is Added to Read			
U.S. CANADIAN BORDER *GNSS REQUIRED	U.S. CANADIAN BORDER	*18000	45000
From	To	MEA	
§ 95.6001 VICTOR Routes—U.S.			
§ 95.6002 VOR Federal Airway V2 Is Amended to Delete			
BUFFALO, NY VOR/DME	ROCHESTER, NY VOR/DME	2800	
ROCHESTER, NY VOR/DME	MAGEN, NY WP	2300	
MAGEN, NY WP	KONDO, NY WP	2300	
KONDO, NY WP *3000—MRA	*WIFFY, NY FIX	2300	
WIFFY, NY FIX	SYRACUSE, NY VORTAC	2300	
SYRACUSE, NY VORTAC	STODA, NY FIX	2400	
STODA, NY FIX	VASTS, NY WP	3000	
VASTS, NY WP	UTICA, NY VORTAC	3400	
UTICA, NY VORTAC	MARIA, NY FIX	3500	
MARIA, NY FIX	ALBANY, NY VORTAC	3000	
ALBANY, NY VORTAC	WARIC, MA WP	5000	
WARIC, MA WP *3500—MOCA	GARDNER, MA VOR/DME	*4000	
§ 95.6003 VOR Federal Airway V3 Is Amended to Delete			
BOSTON, MA VOR/DME	PEASE, NH VOR/DME	3000	
PEASE, NH VOR/DME *2400—MOCA	YUKES, NH WP	*3500	
YUKES, NH WP *7000—MCA PARSO, ME FIX, N BND **2800—MOCA	*PARSO, ME FIX	**3500	
PARSO, ME FIX	LABEL, ME WP. S BND	3500	
LABEL, ME WP *3600—MOCA *3600—GNSS MEA	N BND	7000	
AUGUSTA, ME VOR/DME	AUGUSTA, ME VOR/DME	*7000	
BANGOR, ME VORTAC *2300—MOCA	BANGOR, ME VORTAC	3000	
HOULTON, ME VOR/DME *2700—MOCA	HOULTON, ME VOR/DME	*2800	
	PRESQUE ISLE, ME VOR/DME	*3400	
§ 95.6011 VOR Federal Airway V11 Is Amended to Read in Part			
FORT WAYNE, IN VORTAC *4500—MRA	*GRABI, IN FIX	3000	
GRABI, IN FIX *2400—MOCA	EDGE, OH FIX	*3000	
§ 95.6014 VOR Federal Airway V14 Is Amended to Delete			
BUFFALO, NY VOR/DME	GENESEO, NY VOR/DME	4000	
GENESEO, NY VOR/DME *3300—MOCA	BEEPS, NY FIX	*4000	
BEEPS, NY FIX *3400—MOCA	SCIPO, NY FIX	*4000	

From	To	MEA
SCIPO, NY FIX	VESPE, NY FIX	4000
VESPE, NY FIX	GEORGETOWN, NY VORTAC	4000
GEORGETOWN, NY VORTAC	SHERB, NY FIX	4000
SHERB, NY FIX	COBIA, NY FIX	5000
COBIA, NY FIX	CASIL, NY WP	*5000
*3800—MOCA		
CASIL, NY WP	ALBANY, NY VORTAC	3600
ALBANY, NY VORTAC	WARIC, MA WP	5000
WARIC, MA WP	GARDNER, MA VOR/DME	*4000
*3500—MOCA		
GARDNER, MA VOR/DME	GRAYM, MA FIX	3000
GRAYM, MA FIX	NORWICH, CT VOR/DME	*3000
*2200—MOCA		

§ 95.6029 VOR Federal Airway V29 Is Amended to Delete

SYRACUSE, NY VORTAC	PAGER, NY FIX	*2400
*1800—MOCA		
PAGER, NY FIX	WATERTOWN, NY VORTAC	*2600
*2000—MOCA		
WATERTOWN, NY VORTAC	*LETUS, NY FIX	**3000
*4000—MRA		
**1900—MOCA		
LETUS, NY FIX	MASSENA, NY VORTAC	*3000
*GNSS MEA		

§ 95.6045 VOR Federal Airway V45 Is Amended to Delete

CHARLESTON, WV VOR/DME	HENDERSON, WV VORTAC	3100
HENDERSON, WV VORTAC	*BREMN, OH FIX	**10000
*10000—MCA BREMN, OH FIX, S BND		
**3000—GNSS MEA		
BREMN, OH FIX	APPLETON, OH VORTAC	3000

§ 95.6067 VOR Federal Airway V67 Is Amended to Delete

CUNNINGHAM, KY VOR/DME	MARION, IL VOR/DME	2600
MARION, IL VOR/DME	CENTRALIA, IL VORTAC	2300
CENTRALIA, IL VORTAC	VANDALIA, IL VOR/DME	2500

Is Amended by Adding

CORKI, IL FIX	VANDALIA, IL VOR/DME	2500
---------------------	----------------------------	------

§ 95.6072 VOR Federal Airway V72 Is Amended to Read in Part

FARMINGTON, MO VORTAC	CENTRALIA, IL VORTAC	*3000
*2500—MOCA		

§ 95.6106 VOR Federal Airway V106 Is Amended to Delete

BARNES, MA VORTAC	GARDNER, MA VOR/DME	*3500
*3000—MOCA		
GARDNER, MA VOR/DME	MANCHESTER, NH VOR/DME	4000
MANCHESTER, NH VOR/DME	RAYMY, NH FIX	*2600
*2100—MOCA		
RAYMY, NH FIX	KENNEBUNK, ME VOR/DME	*5500
*2200—MOCA		
*3000—GNSS MEA		

§ 95.6119 VOR Federal Airway V119 Is Amended to Delete

HENDERSON, WV VORTAC	JACEE, WV FIX	2700
JACEE, WV FIX	PARKERSBURG, WV VOR/DME	2700

§ 95.6125 VOR Federal Airway V125 Is Amended to Delete

NIKEL, IL FIX	BURCK, IL WP	4500
BURCK, IL WP	ST LOUIS, MO VORTAC	*3500
*2600—MOCA		

§ 95.6128 VOR Federal Airway V128 Is Amended to Read in Part

CROUP, OH FIX	RULEY, WV FIX. NW BND	3600
---------------------	--------------------------------	------

From	To	MEA
	SE BND	3300
§ 95.6130 VOR Federal Airway V130 Is Amended to Read in Part		
MINNK, RI FIX	MARTHAS VINEYARD, MA VOR/DME	*3000
*1600—MOCA		
§ 95.6145 VOR Federal Airway V145 Is Amended to Delete		
UTICA, NY VORTAC	WEEPY, NY WP	3400
WEEPY, NY WP	FLOOR, NY WP	*3000
*2200—MOCA		
FLOOR, NY WP	WATERTOWN, NY VORTAC	3000
WATERTOWN, NY VORTAC	U.S. CANADIAN BORDER	*3000
*1800—MOCA		
§ 95.6167 VOR Federal Airway V167 Is Amended to Read in Part		
PEAKE, MA FIX	MARCONI, MA VOR/DME	*3000
*1600—MOCA		
§ 95.6174 VOR Federal Airway V174 Is Amended to Delete		
YORK, KY VORTAC	HENDERSON, WV VORTAC	3300
HENDERSON, WV VORTAC	GAYED, WV WP	*4000
*2700—MOCA		
GAYED, WV WP	CARLA, WV FIX	5500
CARLA, WV FIX	ELKINS, WV VORTAC	5500
§ 95.6190 VOR Federal Airway V190 Is Amended to Delete		
FARMINGTON, MO VORTAC	MARION, IL VOR/DME	3000
MARION, IL VOR/DME	POCKET CITY, IN VORTAC	*5000
*2000—MOCA		
*2300—GNSS MEA		
§ 95.6196 VOR Federal Airway V196 Is Amended to Delete		
UTICA, NY VORTAC	*SARANAC LAKE, NY VOR/DME	5400
*6500—MCA SARANAC LAKE, NY VOR/DME, E BND		
SARANAC LAKE, NY VOR/DME	RIGID, NY WP.	
	E BND	9000
	W BND	500
§ 95.6203 VOR Federal Airway V203 Is Amended to Delete		
STELA, MA FIX	ALBANY, NY VORTAC	*6000
*4000—GNSS MEA		
ALBANY, NY VORTAC	OTOLE, NY WP	*6000
*2200—MOCA		
*3000—GNSS MEA		
OTOLE, NY WP	DINNY, NY WP	*10000
*6900—MOCA		
*7000—GNSS MEA		
DINNY, NY WP	SARANAC LAKE, NY VOR/DME	7000
SARANAC LAKE, NY VOR/DME	MASSENA, NY VORTAC	*10000
*5100—MOCA		
*6000—GNSS MEA		
§ 95.6229 VOR Federal Airway V229 Is Amended to Delete		
HARTFORD, CT VOR/DME	GARDNER, MA VOR/DME	3000
GARDNER, MA VOR/DME	KEENE, NH VORTAC	3600
KEENE, NH VORTAC	JAMMA, VT WP	4500
JAMMA, VT WP	MUDDI, VT FIX	6400
MUDDI, VT FIX	*BURLINGTON, VT VOR/DME	6000
*3100—MCA BURLINGTON, VT VOR/DME, SE BND		
§ 95.6249 VOR Federal Airway V249 Is Amended to Delete		
DELANCEY, NY VOR/DME	MILID, NY FIX	4300
MILID, NY FIX	UTICA, NY VORTAC	3700
§ 95.6273 VOR Federal Airway V273 Is Amended to Delete		
HANCOCK, NY VOR/DME	GEORGETOWN, NY VORTAC	4000

From	To	MEA
GEORGETOWN, NY VORTAC	SYRACUSE, NY VORTAC	4000
§ 95.6282 VOR Federal Airway V282 Is Amended to Delete		
SARANAC LAKE, NY VOR/DME	*FAWNS, NY FIX	5000
*5000—MCA FAWNS, NY FIX, S BND		
FAWNS, NY FIX	U.S. CANADIAN BORDER	5000
§ 95.6318 VOR Federal Airway V318 Is Amended to Delete		
U.S. CANADIAN BORDER	HOULTON, ME VOR/DME	*9000
*3900—MOCA		
HOULTON, ME VOR/DME	U.S. CANADIAN BORDER	1900
§ 95.6322 VOR Federal Airway V322 Is Amended to Delete		
CONCORD, NH VOR/DME	GRUMP, NH WP	4000
GRUMP, NH WP	*NOTTY, NH WP	5000
*6000—MCA NOTTY, NH WP, N BND		
NOTTY, NH WP	WYLIE, NH WP	*7000
*5600—MOCA		
§ 95.6335 VOR Federal Airway V335 Is Amended to Delete		
ST LOUIS, MO VORTAC	ARNOL, IL FIX	2800
ARNOL, IL FIX	*GLASS, MO FIX	**3000
*4500—MRA		
**2100—MOCA		
GLASS, MO FIX	NIKEL, IL FIX	*4500
*2200—MOCA		
*3500—GNSS MEA		
NIKEL, IL FIX	MARION, IL VOR/DME	2400
§ 95.6352 VOR Federal Airway V352 Is Amended to Delete		
PATTA, ME WP	HOULTON, ME VOR/DME	6500
§ 95.6428 VOR Federal Airway V428 Is Amended to Delete		
GEORGETOWN, NY VORTAC	EATEN, NY FIX	4000
EATEN, NY FIX	UTICA, NY VORTAC	3500
§ 95.6429 VOR Federal Airway V429 Is Amended to Delete		
MARION, IL VOR/DME	BIBLE GROVE, IL VORTAC	*5000
*2100—MOCA		
*2300—GNSS MEA		
§ 95.6471 VOR Federal Airway V471 Is Amended to Delete		
MILLINOCKET, ME VOR/DME	HOULTON, ME VOR/DME	*2600
*2000—MOCA		
HOULTON, ME VOR/DME	U.S. CANADIAN BORDER	*2600
*2100—MOCA		
§ 95.6490 VOR Federal Airway V490 Is Amended to Delete		
UTICA, NY VORTAC	GALWA, NY FIX	*4000
*3300—MOCA		
GALWA, NY FIX	CAMBRIDGE, NY VOR/DME	*4000
*3300—MOCA		
CAMBRIDGE, NY VOR/DME	STRUM, NH WP	*6000
*5300—MOCA		
STRUM, NH WP	DUBIN, NH WP	5000
DUBIN, NH WP	LURCH, NH WP	4000
LURCH, NH WP	*MUGGY, NH FIX	4000
*4000—MCA MUGGY, NH FIX, W BND		
MUGGY, NH FIX	MANCHESTER, NH VOR/DME	3000
§ 95.6540 VOR Federal Airway V540 Is Amended to Read in Part		
CUNNINGHAM, KY VOR/DME	TAMMS, IL FIX.	
	NW BND	3500
	SE BND	2800
TAMMS, IL FIX	FARMINGTON, MO VORTAC	3500

From	To	MEA
§ 95.6542 VOR Federal Airway V542 Is Amended to Delete		
ELMIRA, NY VOR/DME	BINGHAMTON, NY VOR/DME	3500
BINGHAMTON, NY VOR/DME	OXFOR, NY WP	3500
OXFOR, NY WP	ROCKDALE, NY VOR/DME	4000

§ 95.6480 ALASKA VOR Federal Airway V480 Is Amended to Read in Part

ZESKA, AK FIX	BETHEL, AK VORTAC. NE BND	*2000	
	SW BND	*10000	
*1500—MOCA BETHEL, AK VORTAC	CABOT, AK FIX. NE BND	*8000	
	SW BND	*2000	
*1400—MOCA CABOT, AK FIX	ANIAK, AK FIX. NE BND	*9000	
	SW BND	*8000	
*2400—MOCA ANIAK, AK FIX	JOANY, AK FIX	#*9000	
*5600—MOCA #MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIG- NAL COVERAGE. JOANY, AK FIX	MC GRATH, AK VORTAC. NE BND	*6000	
	SW BND	*9000	
*4700—MOCA NENANA, AK VORTAC	FAIRBANKS, AK VORTAC	*4000	
*3000—MOCA			
From	To	MEA	MAA

§ 95.7001 Jet Routes

§ 95.7091 Jet Route J91 Is Amended to Delete

VOLUNTEER, TN VORTAC	HENDERSON, WV VORTAC	18000	45000
----------------------------	----------------------------	-------	-------

§ 95.7134 Jet Route J134 Is Amended to Delete

FALMOUTH, KY VOR/DME	HENDERSON, WV VORTAC	18000	45000
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	18000	45000

Airway segment		Changeover points	
From	To	Distance	From

**§ 95.8003 VOR Federal Airway Changeover Point
Alaska V480 Is Amended to Modify Changeover Point**

BETHEL, AK VORTAC	MC GRATH, AK VORTAC	117	BETHEL.
-------------------------	---------------------------	-----	---------

V2 Is Amended to Delete Changeover Point

BUFFALO, NY VOR/DME	ROCHESTER, NY VOR/DME	45	BUFFALO.
---------------------------	-----------------------------	----	----------

V45 Is Amended to Delete Changeover Point

HENDERSON, WV VORTAC	APPLETON, OH VORTAC	59	HENDERSON.
----------------------------	---------------------------	----	------------

V203 Is Amended to Delete Changeover Point

ALBANY, NY VORTAC	SARANAC LAKE, NY VOR/DME	60	ALBANY.
-------------------------	--------------------------------	----	---------

V273 Is Amended to Delete Changeover Point

HANCOCK, NY VOR/DME	GEORGETOWN, NY VORTAC	31	HANCOCK.
---------------------------	-----------------------------	----	----------

V282 Is Amended to Delete Changeover Point

SARANAC LAKE, NY VOR/DME	MONTREAL, CA VOR/DME	37	SARANAC LAKE.
--------------------------------	----------------------------	----	---------------

Airway segment		Changeover points	
From	To	Distance	From
V490 Is Amended to Delete Changeover Point			
CAMBRIDGE, NY VOR/DME	MANCHESTER, NH VOR/DME	37	CAMBRIDGE.
J91 Is Amended to Delete Changeover Point			
VOLUNTEER, TN VORTAC	HENDERSON, WV VORTAC	135	VOLUNTEER.
J134 Is Amended to Delete Changeover Point			
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	133	HENDERSON.

[FR Doc. 2021-10972 Filed 5-25-21; 8:45 a.m.]

BILLING CODE 4910-13-P

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 401 and 420

Regulatory Program Fees and Water Charges Rates

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: Commission is updating its regulatory program fees and schedule of water charges for the fiscal year beginning July 1, 2021.

DATES: This final rule is effective July 1, 2021.

FOR FURTHER INFORMATION CONTACT: Elba L. Deck, CPA, Director of Administration and Finance, 609-883-9500, ext. 201.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (“DRBC” or “Commission”) is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to

political boundaries. Its members are the governors of the four basin states— Delaware, New Jersey, New York and Pennsylvania—and on behalf of the federal government, the North Atlantic Division Commander of the U.S. Army Corps of Engineers.

In accordance with 18 CFR 401.43(c), on July 1 of every year, the Commission’s regulatory program fees as set forth in Tables 1, 2 and 3 of that section are subject to an annual adjustment, commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia published by the U.S. Bureau of Labor Statistics during that year. Pursuant to 18 CFR 420.43(c), the same indexed adjustment applies to the Commission’s schedule of water charges for consumptive and non-consumptive withdrawals of surface water within the basin. The referenced April 12-month CPI for 2021 showed an increase of 3.51%. Commensurate adjustments are thus required.

This action is made in accordance with 18 CFR 401.42(c) and 18 CFR 420.42(c), which provide that a revised fee schedule will be published in the **Federal Register** by July 1. The revised fees also may be obtained by contacting the Commission during business hours

or by checking the Commission’s website.

List of Subjects

18 CFR Part 401

Administrative practice and procedure, Project review, Water pollution control, Water resources.

18 CFR Part 420

Water supply.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends parts 401 and 420 of title 18 of the Code of Federal Regulations as follows:

PART 401—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

Subpart C—Project Review Under Section 3.8 of the Compact

■ 2. In § 401.43, revise Tables 1, 2 and 3 to read as follows:

§ 401.43 Regulatory program fees.

* * * * *

TABLE 1 TO § 401.43—DOCKET APPLICATION FILING FEE

Project type	Docket application fee	Fee maximum
Water Allocation	\$433 per million gallons/month of allocation, ¹ not to exceed \$16,226. ¹ Fee is doubled for any portion to be exported from the basin.	Greater of: \$16,226 ¹ or Alternative Review Fee.
Wastewater Discharge	Private projects: \$1,082. ¹ Public projects: \$541. ¹	Alternative Review Fee.
Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$81,132 ¹ .	Greater of: \$81,132 ¹ or Alternative Review Fee.

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 2 TO § 401.43—ANNUAL MONITORING AND COORDINATION FEE

	Annual fee	Allocation
Water Allocation	¹ \$325	<4.99 mgm.

TABLE 2 TO § 401.43—ANNUAL MONITORING AND COORDINATION FEE—Continued

	1 487	5.00 to 49.99 mgm.
	1 703	50.00 to 499.99 mgm.
	1 892	500.00 to 9,999.99 mgm.
	1 1,082	> or = to 10,000 mgm.
	Annual fee	Discharge design capacity
Wastewater Discharge	1 \$325	<0.05 mgd.
	1 660	0.05 to 1 mgd.
	1 887	1 to 10 mgd.
	1 1,082	>10 mgd.

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 3 TO § 401.43—ADDITIONAL FEES

Proposed action	Fee	Fee maximum
Emergency Approval Under 18 CFR 401.40	\$5,000	Alternative Review Fee.
Late Filed Renewal Surcharge	\$2,000	
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee.
Name change	¹ \$1,082	
Change of Ownership	¹ \$1,623	

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

■ 3. The authority citation for part 420 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 4. In § 420.41, revise paragraphs (a) and (b) to read as follows:

§ 420.41 Schedule of water charges.

* * * * *

(a) \$87 per million gallons for consumptive use, subject to paragraph (c) of this section; and

(b) \$0.87 per million gallons for non-consumptive use, subject to paragraph (c) of this section.

Dated: May 18, 2021.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2021-10950 Filed 5-25-21; 8:45 am]

BILLING CODE P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046-AB17

2021 Adjustment of the Penalty for Violation of Notice Posting Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

DATES: This final rule is effective May 26, 2021.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, (202) 921-2665, or Savannah Marion Felton, Senior Attorney, (202) 921-2671, Office of Legal Counsel, 131 M St. NE, Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or 1-800-669-6820 (TTY).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is incorporated by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207 of the Genetic Information Non-Discrimination Act (GINA), and implemented in 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other

training program covered by Title VII, ADA, or GINA must post notices describing the pertinent provisions of these laws. Such notices must be posted in prominent and accessible places where notices to employees, applicants, and members are customarily maintained. 29 CFR 1601.30(a). Failure to comply with this posting requirement is subject to penalty pursuant to the Federal Civil Penalties Adjustment Act, as amended. 29 CFR 1601.30(b). On average, the Equal Employment Opportunity Commission (EEOC or Commission) issues fewer than 60 posting notice violations annually.

The EEOC first adjusted the civil monetary penalty for violations of the notice posting requirements in 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, Sec. 31001(s)(1), 110 Stat. 1373. A final rule was published in the **Federal Register** on May 16, 1997, at 62 FR 26934, which raised the maximum penalty per violation from \$100 to \$110. The EEOC's second adjustment, made pursuant to the FCPIA Act, as amended by the DCIA, was published in the **Federal Register** on March 19, 2014, at 79 FR 15220 and raised the maximum penalty per violation from \$110 to \$210.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, Sec. 701(b), 129 Stat. 599, further amended the FCPIA Act, to require each

federal agency, not later than July 1, 2016, and not later than January 15 of every year thereafter, to issue regulations adjusting for inflation the maximum civil penalty that may be imposed pursuant to each agency's statutes. The purpose of the annual adjustment for inflation was to maintain the remedial impact of civil monetary penalties and promote compliance with the law. The EEOC's initial adjustment made pursuant to the 2015 Act was published in the **Federal Register** on June 2, 2016, at 81 FR 35269 and raised the maximum penalty per violation from \$210 to \$525. The EEOC subsequently made annual adjustments pursuant to the 2015 Act in 2017, 2018, 2019, and 2020, ultimately raising the maximum penalty per violation to \$569.¹

These annual adjustments to the penalty are calculated pursuant to the inflation adjustment formula provided in section 5(b) of the 2015 Act. In accordance with section 6 of the 2015 Act, the adjusted penalty will apply only to penalties assessed after the effective date of the adjustment. Generally, the periodic inflation adjustment to a civil monetary penalty under the 2015 Act will be based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of adjustment and the prior year's October CPI-U.

II. Calculation

The adjustment set forth in this final rule was calculated by comparing the CPI-U for October 2019 with the CPI-U for October 2020, resulting in an inflation adjustment factor of 1.01182. The first step of the calculation is to multiply the inflation adjustment factor (1.01182) by the most recent civil penalty amount (\$569) to calculate the inflation-adjusted penalty level (\$575.72558). The second step is to round this inflation-adjusted penalty to the nearest dollar (\$576). Accordingly, the Commission is now adjusting the maximum penalty per violation

¹ The EEOC's second adjustment made pursuant to the 2015 Act was published in the **Federal Register** on January 31, 2017, at 82 FR 8812 and raised the maximum penalty per violation from \$525 to \$534. EEOC's third adjustment made pursuant to the 2015 Act was published in the **Federal Register** on January 18, 2018 at 83 FR 2537 and raised the maximum penalty per violation from \$534 to \$545. EEOC's fourth adjustment made pursuant to the 2015 Act was published in the **Federal Register** March 21, 2019 at 84 FR 10410 and raised the maximum penalty per violation from \$545 to \$559. EEOC's most recent adjustment made pursuant to the 2015 Act was published in the **Federal Register** March 18, 2020 and raised the maximum penalty per violation from \$559 to \$569.

specified in 29 CFR 1601.30(a) from \$569 to \$576.

III. Regulatory Procedures

Administrative Procedure Act

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. The Commission finds that under 5 U.S.C. 553(b)(3)(B) good cause exists to not utilize notice of proposed rulemaking and public comment procedures for this rule because this adjustment of the civil monetary penalty is required by the 2015 Act, the formula for calculating the adjustment to the penalty is prescribed by statute, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, the Commission is issuing this revised regulation as a final rule without notice and comment.

Executive Order 12866

Pursuant to Executive Order 12866, the EEOC has coordinated with the Office of Management and Budget (OMB). Under section 3(f) of Executive Order 12866, the EEOC and OMB have determined that this final rule will not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The great majority of employers and entities covered by these regulations comply with the posting requirement, and, as a result, the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statute.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) only requires a regulatory flexibility analysis when

notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (CRA) requires 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. EEOC 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 the effective date of the rule. Under the CRA, a major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by the CRA at 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

Dated: May 20, 2021.

Charlotte A. Burrows,

Chair, Equal Employment Opportunity Commission.

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11; 28 U.S.C. 2461 note, as amended; Pub. L. 104–134, Sec. 31001(s)(1), 110 Stat. 1373.

■ 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation

Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than \$576 for each separate offense.

[FR Doc. 2021-11085 Filed 5-25-21; 8:45 am]

BILLING CODE 6570-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0262]

RIN 1625-AA08

Special Local Regulation; Potomac River, Between Jones Point, VA, and National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters located between Jones Point, VA, and National Harbor, MD, during a swim event on June 6, 2021. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland—National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 6:30 a.m. to 11 a.m. on June 6, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0262 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland—National Capital Region; telephone 410-576-2674, email D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On April 12, 2021, WaveOne Open Water of Washington, DC, notified the Coast Guard that from 7:30 a.m. to 10 a.m. on June 6, 2021, it will be conducting the Washington’s Crossing 2021, an open water swim competition on the Potomac River, downriver of and parallel to, the Woodrow Wilson Memorial (I-95/I-495) Bridge. The event is being staged out of National Harbor, MD. In response, on April 26, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Potomac River, Between Jones Point, VA, and National Harbor, MD” (86 FR 21985). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this swim event. During the comment period that ended May 11, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the “Washington’s Crossing 2021” event. This rule must be in effect by June 6, 2021, to protect participants and the nearby public from potential hazards associated with this event. Potential hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Maryland—National Capital Region (COTP) has determined that potential hazards associated with the swim event will be a safety concern for anyone intending to operate in or near the swim area. The purpose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 26, 2021. There are no changes in

the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation to be enforced from 6:30 a.m. through 11 a.m. on June 6, 2021. There is no alternate date planned for this event. The regulated area will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47’35” N, longitude 077°02’22” W, thence east along the northern extent of the Woodrow Wilson Memorial (I-495/I-95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47’36” N, longitude 077°01’32” W, thence south along the Maryland shoreline to latitude 38°46’52” N, longitude 077°01’13” W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47’23” N, longitude 077°03’03” W, thence north along the Virginia shoreline to the point of origin. The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the open water swim event, scheduled from 7:30 a.m. to 10 a.m. on June 6, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

Except for Washington’s Crossing 2021 participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a non-participant. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland—National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the

regulated area. Official patrol vessels will direct non-participants while within the regulated area.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, time of day and duration of the regulated area, which will impact a small designated area of the Potomac River for 4.5 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States. The temporary regulated area will be in effect for 4.5 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0262 to read as follows:

§ 100.501T05–0262 Washington’s Crossing 2021, Potomac River, Between Jones Point, VA, and National Harbor, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47’35” N, longitude 077°02’22” W, thence east along the northern extent of the Woodrow Wilson Memorial (I–495/I–95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47’36” N, longitude 077°01’32” W, thence south along the Maryland shoreline to latitude 38°46’52” N, longitude 077°01’13” W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47’23” N, longitude 077°03’03” W, thence north along the Virginia shoreline to the point of origin. These coordinates are based on datum NAD 1983.

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

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

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

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

Participant means all persons and vessels registered with the event sponsor as participating in the “Washington’s Crossing 2021” swim event, or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland—National Capital Region or Event PATCOM.

(2) To seek permission to enter, contact the COTP Maryland—National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland—National Capital Region or Event PATCOM.

(3) The COTP Maryland—National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

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

(e) *Enforcement period.* This section will be enforced from 6:30 a.m. to 11 a.m. on June 6, 2021.

Dated: May 20, 2021.

David E. O’Connell,
Captain, U.S. Coast Guard, Captain of the Port Maryland—National Capital Region.
[FR Doc. 2021–11114 Filed 5–25–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0334]

Safety Zones; Annual Fireworks Displays Within the Captain of the Port Sector Puget Sound

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

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce fourteen safety zones for annual firework displays in the Captain of the Port Sector Puget Sound Zone from 5 p.m. on July 4, 2021, through 1 a.m. on July 5, 2021. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these safety zones is prohibited unless authorized by Captain of the Port Sector Puget Sound or their Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced for the fourteen safety zones identified in the **SUPPLEMENTARY INFORMATION** section below from 5 p.m. on July 4, 2021, through 1 a.m. on July 5, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6051, SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zones in 33 CFR 165.1332 for the following fourteen Annual Fireworks Displays within the Captain of the Port Puget Sound (COTP) Area of Responsibility (AOR). These regulations will be enforced from 5 p.m. on July 4, 2021, through 1 a.m. on July 5, 2021, at the following locations:

Event name	Location	Latitude	Longitude
Tacoma Freedom Fair	Commencement Bay	47°17.103’ N	122°28.410’ W
City of Anacortes	Fidalgo Bay	48°30.016’ N	122°36.154’ W
Alderbrook Resort & Spa Fireworks	Hood Canal	47°21.033’ N	123°04.1’ W
Fireworks Display	Henderson Bay	47°21.8’ N	122°38.367’ W
Sheridan Beach Community	Lake Forest Park	47°44.783’ N	122°16.917’ W
Kingston Fireworks	Appletree Cove	47°47.65’ N	122°29.917’ W
Mukilteo Lighthouse Festival	Possession Sound	47°56.9’ N	122°18.6’ W
Brewster Fire Department Fireworks	Brewster	48°05.362’ N	119°47.147’ W
Port Angeles	Port Angeles Harbor	48°07.033’ N	123°24.967’ W
Friday Harbor Independence	Friday Harbor	48°32.255’ N	123°0.654’ W

Event name	Location	Latitude	Longitude
Roche Harbor Fireworks	Roche Harbor	48°36.7' N	123°09.5' W
Blast Over Bellingham	Bellingham Bay	48°44.933' N	122°29.667' W
True Colors Event	Blaine	48°59.488' N	122°46.339' W
City of Mount Vernon Fireworks	Edgewater Park	48°25.178' N	122°20.424' W

The special requirements listed in 33 CFR 165.1332(b) apply to the activation and enforcement of these safety zones. All vessel operators who desire to enter the safety zone must obtain permission from the COTP or their Designated Representative by contacting the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) on VHF Channel 13 or Channel 16 or via telephone at (206) 217-6002. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to the publication of this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advanced notification of enforcement of these safety zones via the Broadcast Notice to Mariners or Local Notice to Mariners.

Dated: May 20, 2021.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port, Sector Puget Sound.

[FR Doc. 2021-11131 Filed 5-25-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0338]

RIN 1625-AA00

Safety Zone; Tugs Kimberly Anne and Westwind and Barge Big Digger Operating in the Straits of Mackinac, MI.

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comment.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable water within a 500-yard radius of two tugs and a barge in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the work, inspection, diving, and surveying of pipelines in the Straits of Mackinac. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port

Sault Sainte Marie or their designated representative. Due to the lengthy duration of this safety zone, the Coast Guard is accepting and reviewing public comments until June 15, 2021. While this rule is effective beginning June 1, 2021, the Coast Guard reserves the right to modify the safety zone if an issue is raised by the public comments that requires such a modification.

DATES: This rule is effective without actual notice from May 26, 2021 through October 15, 2021. For the purposes of enforcement, actual notice will be issued from June 1, 2021 through May 26, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0338 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO4 Robert A. Gruschow or LT Deaven S. Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard at (906) 253-2462/(906) 635-3223 or email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online at <http://www.regulations.gov> by typing the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

III. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule with an abridged opportunity to comment out prior pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details of the specific dates, vessels names, and safety zone distances concerning the safety zones were not finalized within a sufficient time to allow for notice and a subsequent 30-day comment period before work, inspection, surveying and the replacement and the removal of multiple cables. Delaying this rule to allow for a notice and comment period would be impracticable because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with aforementioned operation commencing on June 1, 2021.

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

associated with the work, inspections, and surveying of underwater infrastructure.

IV. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards created by the work, inspection, diving, and surveying of underwater infrastructure in the Straits of Mackinac starting June 1, 2021 will be a safety concern for anyone within a 500-yard radius of the tugs and barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operation is conducted.

V. Discussion of the Rule

This rule establishes a safety zone from June 1, 2021 to October 15, 2021. The safety zone will cover all navigable waters within 500 yards of the tugs and barge being used to work, inspect, dive, and survey pipelines in the Straits of Mackinac. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the operation is conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone,

and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500 yards of tugs and barges used to work, inspect, dive, and survey pipelines in the Straits of Mackinac. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0338 to read as follows:

§ 165.T09–0338 Safety Zone; Tugs Kimberly Anne and Westwind and Barge Big Digger operating in the Straits of Mackinac, MI.

(a) *Location.* The following areas are safety zones: All navigable water within 500 yards of the Tugs Kimberly Anne and Westwind and Barge Big Digger while conducting work, inspection, diving, and surveying of pipelines in the Straits of Mackinac.

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative.

(2) Before a vessel operator may enter or operate within the safety zones, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from June 1, 2021 to October 15, 2021.

Dated: May 20th, 2021.

A.R. Jones,
Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2021–11119 Filed 5–25–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0206]

RIN 1625–AA00

Safety Zone; East River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the east channel of the East River between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point approximately 800 yards northeast of the bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the retrieval, maintenance and reinstallation of one TriFrame with three attached underwater turbines, associated cabling, and three Private Aids to Navigation. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

DATES: This rule is effective without actual notice from May 26, 2021 through 11:59 p.m., May 27, 2021. For the purposes of enforcement, actual notice will be used from 3:30 p.m., May 3, 2021 until May 26, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0206 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Sector New York Waterways Management Division; U. S. Coast Guard; telephone 718–354–4195, email jeffrey.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATON Private Aids to Navigation
RITE Roosevelt Island Tidal Energy Project
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Four barges, four tugs, and three work vessels will be conducting heavy lift operations and removing and reinstalling three PATON in the east channel of the East River, north of the Roosevelt Island Bridge, while removing, maintaining and reinstalling one TriFrame with three underwater turbines for the RITE Project. It is impracticable to publish an NPRM because we must establish this safety zone by May 3, 2021 to respond to the potential safety hazards associated with heavy lift operations and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The Coast Guard is publishing this rule to be effective through May 27, 2021 in case the project is delayed due to unforeseen circumstances.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and against the public interest because immediate action is needed to respond to the potential safety hazards associated with multiple construction vessels operating within a confined area of the East River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with the installation of the RITE Project TriFrame with three turbines and associated PATON marking this installation on May 3–6,

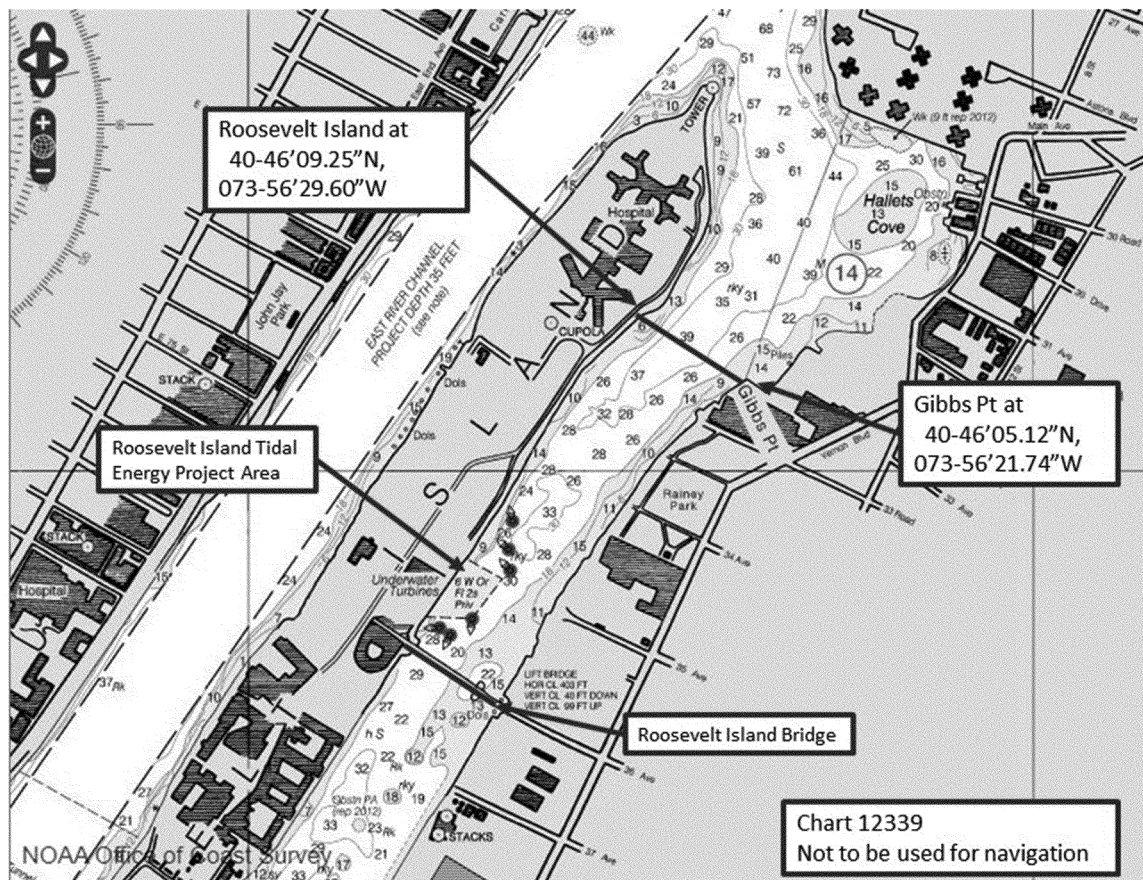
2021, will be a safety concern for anyone in the East River, east of Roosevelt Island, between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while eleven tugs, barges and work

vessels are installing one TriFrame with three underwater turbines and three PATON marking the RITE Project area.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from May 3, 2021 through May 27, 2021. The safety zone will

cover all navigable waters of the East River east of Roosevelt Island between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point being used by vessels and personnel to retrieve, conduct maintenance, and reinstall Phase 1 of the RITE Project.



We anticipate enforcing the safety zone during the heavy lift operations for retrieval, maintenance, and reinstallation of the RITE Project TriFrame with three turbines and three associated PATON scheduled from approximately 3:30 p.m. on May 3, 2021, until 2:30 p.m. on May 6, 2021. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these constricted navigable waters while the project and PATON marking the project area are being retrieved for maintenance and reinstallation. When enforced, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard is publishing this rule to be effective through May 27, 2021 in case the project is delayed due to unforeseen circumstances.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the East River for approximately 71 hours when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, publish the zone in the Local Notice to Mariners, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 71 hours that will prohibit entry between the Roosevelt Island Bridge (mile 6.4) and Gibbs Point being used by vessels, machinery and personnel to retrieve, maintain, and reinstall Phase 1 of the RITE Project and three PATON marking the project area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0206 to read as follows:

§ 165.T01–0206 Safety Zone; East River, New York, NY.

(a) *Location.* The following area is a safety zone: All waters of the East River, from surface to bottom, east of Roosevelt Island, upstream of the Roosevelt Island Bridge (mile 6.4) and downstream of a line connecting the following points: Gibbs Pt at (pa)40°46′05.12″ N, 073°56′21.74″ W to Roosevelt Island at (pa) 40°46′09.25″ N, 073°56′29.60″ W. These coordinates are based on NAD 83.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-Channel 16 or at 718–354–4353. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective without actual notice from May 26, 2021 through 11:59 p.m., May 27, 2021. For the purposes of enforcement, actual notice will be used from 3:30 p.m., May 3, 2021 until May 26, 2021, but will only be enforced when Roosevelt Island Tidal Energy Project retrieval, maintenance, and reinstallation operations are in progress.

Dated: April 28, 2021.

Jason P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2021-11103 Filed 5-25-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2021-0349]

RIN 1625-AA00

Safety Zone; Explosive Arc at Military Ocean Terminal Concord, Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO). This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective without actual notice from May 26, 2021 through 11:59 p.m. on June 4, 2021. For the purposes of enforcement, actual notice will be used from 12:01 a.m. May 24, 2021 until May 26, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0349 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Anthony Solarees, Waterways Management, U.S. Coast Guard; telephone (415) 399-7443, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The Coast Guard received the initial report of larger explosive arc on May 18, 2021. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this temporary safety zone by May 24, 2021 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment in the navigable waters around the potentially hazardous explosive on-loading.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the explosive on-loading will exist between May 24, 2021 and June 4, 2021. There will be a safety concern for anyone within a 4,000-ft radius of the explosive on-load. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters surrounding the potentially hazardous on-loading operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone in the navigable waters around the explosives on-loading occurring at Military Ocean Terminal Concord (MOTCO), off Concord, CA for a five-day cargo operation period conducted between May 24, 2021 and June 4, 2021. The temporary safety zone will encompass the navigable waters of

Suisun Bay, from surface to bottom, within a circle formed by connecting all points 4,000 feet out from the location of the explosive material at approximate position 38°3.46" N, 122°0.90" W or as announced via Broadcast Notice to Mariners. The projected explosive arc presents the need for a 4,000 foot radius, which is larger than the safety zone already established in 33 CFR 165.1198.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the explosive materials during cargo operations, to ensure the safety of personnel, vessels, and the marine environment. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended,

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the explosives on-loading occurring at Military Ocean Terminal Concord (MOTCO), off Concord, CA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–054 to read as follows:

§ 165.T11–054 Safety Zone; Explosive arc at Military Ocean Terminal Concord, Suisun Bay, Concord, CA

(a) *Location.* The following area is a safety zone: All navigable waters of Suisun Bay, from surface to bottom, within a circle formed by connecting all points 4,000 feet out from the location of the explosive material at approximate position 38°3.46′ N, 122°0.90′ W or as announced via Broadcast Notice to Mariners.

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

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

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from May 24, 2021 at

12:01 a.m. until June 4, 2021 at 11:59 p.m. or as announced via marine information broadcast.

(e) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7.

Dated: May 21, 2021

Jordan M. Balduenza,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.

[FR Doc. 2021-11159 Filed 5-25-21; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0319; FRL-10023-71-Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the "1997 ozone NAAQS") for the York-Adams Area of Pennsylvania. EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on June 25, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0319. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at pagan-incle.keila@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2021 (86 FR 8736), EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the York-Adams Area through February 13, 2028, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on March 10, 2020.

II. Summary of SIP Revision and EPA Analysis

On January 14, 2008 (73 FR 2163, effective February 13, 2008), EPA approved a redesignation request (and maintenance plan) from PADEP for the York-Adams Area. Per CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,¹ the D.C. Circuit held that this requirement cannot be waived for areas, like the York-Adams Area, that had been redesignated to attainment for the 1997 ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.² PADEP's March 10, 2020 SIP submittal fulfills

¹ 882 F.3d 1138 (D.C. Cir. 2018).

² "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the February 9, 2021 NPRM, consistent with longstanding EPA's guidance,³ areas that meet certain criteria may be eligible to submit a limited maintenance plan (LMP) to satisfy one of the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirements to "provide for maintenance" by demonstrating that the area's design value⁴ are well below the NAAQS and that it has had historical stability attaining the NAAQS. EPA evaluated PADEP's March 10, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the York-Adams Area as a revision to the Pennsylvania SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 ozone NAAQS federally enforceable as part of the Pennsylvania SIP. Other specific requirements of PADEP's March 10, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received one comment on the February 9, 2021 NPRM and a summary of the comment and EPA's response is provided herein. The comment received is in the docket for this rulemaking action.

Comment: The commenter asserts that the LMP should not be approved because "Pennsylvania identifies no actual contingency measures." According to the commenter, a "contingency measure is supposed to be a known measure that can be quickly implemented by a state in order to prevent the violation of the NAAQS." The comment asserts that current contingency measures are defective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred.

³ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

⁴ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

The comment claims that EPA is aware Pennsylvania has a history of not meeting its CAA requirements on time, and that it can take Pennsylvania more than two years to implement a regulation, which would be too long to prevent a violation of the NAAQS.

Response: The commenter asserts that Pennsylvania identifies no actual contingency measures because the measures are not yet “evaluated” and “determined” and cannot be implemented before a violation of the NAAQS occurs. Because Pennsylvania identifies two regulatory and six non-regulatory contingency measures in general terms, EPA understands the comment’s use of the term “evaluated” and “determined” must mean something like the specific measures identified by PADEP have not been fully promulgated and are not in effect at this time. If EPA’s understanding is correct, EPA agrees with this fact, but does not agree that this has any bearing on the approvability of the particular contingency measures or of the overall LMP.

PADEP identifies six non-regulatory measures and two regulatory measures. The two regulatory measures are “additional controls” on consumer products and portable fuel containers. The six non-regulatory measures are: Voluntary diesel engine “chip reflash;” diesel retrofit for public or private local onroad or offroad fleets; idling reduction technology for Class 2 yard locomotives; idling technologies or strategies for truck stops, warehouses, and other freight-handling facilities; accelerated turnover of lawn and garden equipment; additional promotion of alternative fuel for home heating and agriculture use. As stated in the Calcagni memo, EPA’s long-standing interpretation is that contingency measures for maintenance of the NAAQS are not required to be fully adopted in order to be approved. The commenter refers to a recent court case vacating, among other things, the contingency measure provisions in EPA’s rule for implementing the 2015 ozone NAAQS, *Sierra Club v. EPA*, No. 15–1465 (D.C. Cir. January 29, 2021). It is possible that the commenter has conflated the contingency measure provisions at issue in that case, which pertained to attainment plans, and those at issue in this LMP, which pertain to maintenance plans. The contingency measure provisions for maintenance and attainment are found in two different sections of the CAA, with substantially different wording and requirements. The attainment plan contingency measures provisions in CAA Section 172(c)(9) require that the attainment

plan have “specific measures” that can “take effect in any such case without further action by the State or the Administrator” if the area fails to make reasonable further progress or attain the NAAQS. 42 U.S.C. 7502(c)(9). Section 175A of the CAA sets forth the contingency measure requirements for maintenance areas. Section 175A(d) requires that the maintenance plan contain “such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” 42 U.S.C. 7505a(d). Unlike Section 172(c)(9) there is no requirement under section 175A that the contingency measures be set forth with specificity or that they be able to take effect without further action by EPA or the State.

With this statutory background in mind, EPA does not agree that the plan should be disapproved due to PADEP’s ability to promulgate a contingency measure in sufficient time to avert a violation of the NAAQS. As noted previously, CAA section 175A(d) mandates that a maintenance plan must contain “such contingency provisions as the Administrator deems necessary to assure that the State will promptly *correct any violation* of the standard which occurs after the redesignation of the area as an attainment area.” (emphasis added). The statute therefore does not include any requirement that a maintenance plan’s contingency measures *prevent* a violation of the NAAQS, but rather only that those selected measures be available to address a violation of the NAAQS after it already occurs. Pennsylvania also elected to adopt a “warning level response,” which states that PADEP will consider adopting contingency measures if, for two consecutive years, the fourth highest eight-hour ozone concentrations at any monitor in the area are above 84 parts per billion (ppb). But this warning level response is not required under the CAA, and therefore we do not agree with the commenter that the plan should be disapproved based on the commenter’s concern over the timeliness of the warning level response implementation.

Moreover, as a general matter, we do not agree that the schedules for implementation of contingency provisions in the LMP are insufficient. As noted, the CAA provides some degree of flexibility in assessing a maintenance plan’s contingency measures—requiring that the plan contain such contingency provisions “as the Administrator deems necessary” to assure that any violations of the NAAQS

will be “promptly” corrected. EPA’s longstanding guidance for redesignations, the Calcagni Memo, also does not provide precise parameters for what strictly constitutes “prompt” implementation of contingency measures, noting that, for purposes of CAA section 175A, “a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved.” Calcagni memo at 12. However, the guidance does state that the plan should ensure that the measures are adopted “expeditiously” once they are triggered, and should provide “a schedule and procedure for adoption and implementation, and a specific time limit for action by the state.” *Id.* We think the State’s plan, which provides specific lists of regulatory and non-regulatory measures that the state would consider after evaluating and assessing what it believed to be the cause of increased ozone concentrations, and the specific timeframes it would use to expeditiously implement the various measures, meets the requirements of CAA section 175A.

IV. Final Action

EPA is approving the 1997 ozone NAAQS limited maintenance plan for the York-Adams Area as a revision to the Pennsylvania SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Pennsylvania’s limited maintenance

plan for the York-Adams Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 19, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

- 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area” at the end of the table to read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area.	York-Adams Area ..	3/10/20	5/26/21, [insert Federal Register citation].	The York-Adams area consists of York and Adams Counties.

* * * * *
[FR Doc. 2021–11165 Filed 5–25–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2021–0079; FRL 10022–49–OW]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action announces the Environmental Protection Agency’s

(EPA) approval of alternative testing methods for use in measuring the levels of contaminants in drinking water to determine compliance with national primary drinking water regulations. The Safe Drinking Water Act authorizes EPA to approve the use of alternative testing methods through publication in the **Federal Register**. EPA is using this streamlined authority to make 17 additional methods available for analyzing drinking water samples. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing

monitoring costs while maintaining public health protection.

DATES: This action is effective May 26, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2021-0079. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Glynda Smith, Technical Support Center, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; telephone number: (513) 569-7652; email address: smith.glynda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Public water systems are the regulated entities required to measure contaminants in drinking water samples. In addition, EPA Regions as well as State and Tribal governments with authority to administer the regulatory program for public water systems under the Safe Drinking Water

Act (SDWA) may measure contaminants in water samples. When EPA sets a monitoring requirement in its national primary drinking water regulations for a given contaminant, the Agency also establishes (in the regulations) standardized test procedures for analysis of the contaminant. This action makes alternative testing methods available for particular drinking water contaminants beyond the testing methods currently established in the regulations. Drinking water systems, in consultation with the laboratories that support their compliance monitoring, may choose to use a test procedure established in the existing regulations, an alternative testing method that was approved in prior expedited approval actions, or an alternative method approved in this action. Categories and entities that may ultimately be affected by this action include:

Category	Examples of potentially regulated entities	NAICS ¹
State, local, & tribal governments	State, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; state, local and tribal governments that directly operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this action. Other types of entities not listed in the table could also have some interest. To determine whether your facility is affected by this action, you should carefully examine the applicability language in the Code of Federal Regulations (CFR) at 40 CFR 141.2 (definition of a public water system). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Action

- APHA: American Public Health Association
- ATP: Alternate Test Procedure
- CBI: Confidential Business Information
- CFR: Code of Federal Regulations
- DPASV: Differential Pulse Anodic Stripping Voltammetry
- DPD: N,N-Diethyl-p-phenylenediamine
- EPA: United States Environmental Protection Agency
- GWR: Ground Water Rule
- MCA: Monochloramine
- MPN: Most probable number
- NAICS: North American Industry Classification System
- QC: Quality Control

- RTCR: Revised Total Coliform Rule
- SDWA: The Safe Drinking Water Act
- SWTR: Surface Water Treatment Rule
- SM: Standard Methods
- VCSB: Voluntary Consensus Standard Bodies

II. Background

A. What is the purpose of this action?

In this action, EPA is approving 17 analytical methods for determining contaminant concentrations in drinking water samples collected under SDWA. Regulated entities required to sample and monitor may use either the testing methods already established in existing regulations or the alternative testing methods being approved in this action or in prior expedited approval actions. The new methods are listed along with other methods similarly approved through previous expedited actions in the *Code of Federal Regulations* (CFR) at 40 CFR part 141, appendix A to subpart C and on EPA's drinking water methods website at <https://www.epa.gov/dwanalyticalmethods>.

B. What is the basis for this action?

When EPA determines that an alternative analytical method is "equally effective" (i.e., as effective as a method that has already been

promulgated in the regulations), SDWA allows EPA to approve the use of the alternative testing method through publication in the **Federal Register** (see SDWA section 1401(1)). EPA is using this streamlined approval authority to make 17 additional methods available for determining contaminant concentrations in drinking water samples collected under SDWA. EPA has determined that, for each contaminant or group of contaminants listed in Section III of this document, the additional testing methods being approved in this action are as effective as one or more of the testing methods already approved in the regulations for those contaminants. Section 1401(1) of SDWA states that the newly approved methods "shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation." Accordingly, this action makes these additional 17 analytical methods legally available as options for meeting EPA's monitoring requirements.

This action does not add regulatory language, but does, for informational purposes, update an appendix to the regulations at 40 CFR part 141 that lists all methods approved under section

1401(1) of SDWA. Accordingly, while this action is not a rule, it is updating CFR text and therefore is being published in the "Final Rules" section of the **Federal Register**.

III. Summary of Approvals

EPA is approving 17 methods that are equally effective relative to methods previously promulgated in the regulations. By means of this action, these 17 methods are added to appendix A to subpart C of 40 CFR part 141.

A. Methods Developed by EPA

1. EPA Method 903.0, Revision 1.0. Alpha-Emitting Radium Isotopes in Drinking Water (USEPA 2021a). EPA Method 903.0 (USEPA 1980a) was published in the drinking water regulations at 40 CFR 141.25(a) as a screening method for radium-226. The approved method describes a single-point calibration, contains no quality control specifications, and provides no calculation for the drinking water detection limit. EPA Method 903.0, Revision 1.0 was developed in response to comments from stakeholders requesting a method revision that provides clearly defined calibration and quality control criteria to assure a more robust procedure capable of yielding consistent and reliable analytical results. The methodology relative to the approved method is unchanged. The importance of timing intervals is also discussed in the revised method. The primary interferences in radium-226 determination are due to activity contributed by radium-224 and, to a lesser degree, radium-223. Due to their short half-lives, the interferences due to radium-224 and radium-223 can be minimized if samples are held at least two weeks prior to counting.

The revised method contains detailed instructions on preparing an appropriate calibration curve based on the allowable yield range instead of relying on a single-point calibration. Alpha particle response is sensitive to the level of solid residue left in the final precipitate. A single-point calibration assumes that every sample will yield the same mass of solid precipitate. Assessing the alpha efficiency based on a yield range will improve the accuracy in the final calculated activity.

The revised method contains the quality control specifications that laboratories are expected to follow in order to obtain certification to analyze drinking water compliance samples. In addition to incorporation of specific quality control requirements and acceptance criteria, the revised method also allows the option to incorporate barium-133 as a radiochemical yield

monitor. The currently approved method relies on gravimetric determination of the final barium sulfate precipitate to estimate the fractional yield of radium carried on the precipitate. Barium-133 is a non-interfering gamma emitter that is carried through the precipitation and complexation steps along with radium-226. Incorporation of a radiochemical yield monitor provides a sensitive option to assess yield based on activity instead of mass.

The revised method contains an expanded "calculations" section that includes the appropriate equation for determining the drinking water detection limit as defined in the regulations at 40 CFR 141.25(c).

EPA has determined that EPA Method 903.0, Revision 1.0 is equally effective for screening drinking water samples for radium-226, relative to the approved method. The basis for this determination is discussed in greater detail in Smith 2020b. Therefore, EPA is approving EPA Method 903.0, Revision 1.0 for determining alpha-emitting radium isotopes in drinking water. EPA Method 903.0 Rev. 1.0 is available at the National Service Center for Environmental Publications.

2. EPA Method 903.1, Revision 1.0. Radium-226 in Drinking Water Radon Emanation Technique (USEPA 2021b). EPA Method 903.1 (USEPA 1980b) was published in the drinking water regulations at 40 CFR 141.25(a) as a specific method for determination of radium-226. The approved method contains limited calibration information, no quality control specifications, no uncertainty calculation, and provides no calculation for the drinking water detection limit. As noted previously in the discussion about EPA Method 903.0, Rev. 1.0, EPA Method 903.1, Rev. 1.0 was also developed in response to comments from stakeholders requesting a method revision with calibration and quality control criteria.

The methodology in the revised method is unchanged and involves isolating the alpha-emitting radium isotopes through selective precipitation and complexation steps. Radon-222, the progeny of radium-226, is allowed to ingrow and is then purged into an alpha scintillation cell for subsequent counting.

The revised method contains the quality control specifications that laboratories are expected to follow in order to obtain certification to analyze drinking water compliance samples. In addition to incorporation of specific quality control requirements and acceptance criteria, the revised method

provides additional options for assessing yield. The currently approved method specifies a barium sulfate precipitation step to estimate the fractional yield of radium carried on the precipitate. One option in the revised method allows the incorporation of barium-133 as a radiochemical yield monitor. Barium-133 is a non-interfering gamma emitter that is carried through the procedure along with radium-226 and counted directly without requiring an additional precipitation step.

Another option for determining yield on the radium-containing solution is to use atomic spectroscopy techniques.

The revised method provides expanded uncertainty calculations based on the fact that each radon-222 atom yields three short-lived alpha-emitting progeny. When half-life is short relative to the counting time, and detector efficiency is high, such as that obtained with alpha scintillation cells, there is an increased probability of observing a count not only from the parent, but also from the progeny.

The revised method also contains an expanded "calculations" section that includes the equation for determining the drinking water detection limit as defined in the regulations at 40 CFR 141.25(c).

EPA has determined that EPA Method 903.1, Revision 1.0 is equally effective for determining radium-226 in drinking water samples, relative to the approved method. The basis for this determination is discussed in greater detail in Smith 2020c. Therefore, EPA is approving EPA Method 903.1, Revision 1.0 for the determination of radium-226 in drinking water. EPA Method 903.1 Rev. 1.0 is available at the National Service Center for Environmental Publications.

3. EPA Method 127. Determination of Monochloramine Concentration in Drinking Water (USEPA 2021c). The Surface Water Treatment Rule (SWTR) (USEPA 1989) specifies at 40 CFR 141.72(a)(4)(i) and at 40 CFR 141.72(b)(3)(i) that water systems must maintain a detectable disinfectant residual in the distribution system. The disinfectant residual can be in the form of total chlorine, combined chlorine or chlorine dioxide. In addition, 40 CFR 141.72(a)(3) and 40 CFR 141.74(b)(5) require that the residual disinfectant concentration in water entering the distribution system cannot fall below 0.2 mg/L for more than four hours. When the SWTR was promulgated, systems primarily relied on free chlorine as a secondary disinfectant to assure maintenance of a detectable residual in the distribution system. More systems have since switched to

the use of chloramination in order to reduce formation of regulated disinfection byproducts. Water systems have relied on measurement of chloramines using the total chlorine N,N-diphenylenediamine (DPD) colorimetric procedure described in Standard Method 4500-Cl G-00 (APHA 2000), which is approved under the SWTR at 40 CFR 141.74(a)(2). Because the DPD reagent can react with a variety of other oxidants that may be present (e.g., organochloramines and manganese), this approach may result in an overestimation of the total chlorine residual. Organochloramines have little to no disinfection efficacy.

Disinfection based on chloramination relies on producing monochloramine (MCA), dichloramine, and nitrogen trichloride. At typical drinking water distribution system pH levels (7–9), MCA predominates and is more effective and stable for disinfection than dichloramine or nitrogen trichloride. While no method was available for specific MCA measurement at the time the SWTR was promulgated, such capability now exists. EPA Method 127 was developed using commercially available reagents and instrumentation. Monochloramine in the presence of a cyanoferrate catalyst reacts with a substituted phenol to form an intermediate monoimine compound. The intermediate couples with excess substituted phenol to form a green-colored indophenol, which is

proportional to the amount of monochloramine present in the sample. The indophenol can be measured using either a colorimeter or a spectrophotometer. It is not subject to the interferences observed with DPD determination and the technique is already used by water systems for (non-regulatory) process control monitoring or as part of a nitrification control plan. The method incorporates quality control specifications to assure robustness and performance.

In addition to internal studies by EPA, two public water systems (PWSs) that employ chloramination for disinfection participated in method validation studies, comparing the performance of EPA Method 127 to the performance of the approved DPD procedure. The validation study report (Alexander, Waters, and Wahman, 2020), summarizing the results from the PWSs' and EPA's studies, details the precision, accuracy, and sensitivity tests that were performed.

EPA has determined that EPA Method 127 is equally effective relative to the approved method for determining total chlorine as monochloramine in finished drinking water. The basis for this determination is discussed in greater detail in Alexander 2021. Therefore, EPA is approving EPA Method 127 for the determination of total chlorine as monochloramine in assessing both minimum disinfection residual at the entry point to the distribution system

and detectable disinfectant residual within the distribution system under the SWTR. EPA Method 127 is available at the National Service Center for Environmental Publications.

B. Methods Developed by Voluntary Consensus Standard Bodies (VCSB)

1. ASTM International. EPA compared the most recent versions of eight ASTM International methods to the earlier versions of those methods that are currently approved in 40 CFR part 141. Most of the changes in the updated versions include additional quality control specifications.

Changes between the earlier approved version and the most recent version of each method are described more fully in Smith (2020a). Besides additional quality control, the revisions involve primarily editorial changes (e.g., updated references, definitions, terminology, procedural clarifications, and reorganization of text). The revised methods are the same as the approved versions with respect to sample collection and handling protocols, sample preparation, analytical methodology, and method performance data; thus, EPA finds they are equally effective relative to the approved methods.

EPA is thus approving the use of the following ASTM methods for the contaminants and their respective regulations listed in the following table:

ASTM revised version	Approved method	Contaminant(s)	Regulation citations
D 6919-17 (ASTM 2017a)	D 6919-03 (ASTM 2003a)	Calcium, Magnesium, Sodium	40 CFR 141.23(k)(1)
D 4327-17 (ASTM 2017b)	D4327-03 (ASTM 2003b)	Fluoride, Nitrate, Nitrite, Orthophosphate, Chloride, Sulfate.	40 CFR 141.23(k)(1) 40 CFR 143.4(b)
D 3697-17 (ASTM 2017c)	D 3697-02 (ASTM 2002a)	Antimony	40 CFR 141.23(k)(1)
D 3223-17 (ASTM 2017d)	D 3223-02 (ASTM 2002b)	Mercury	40 CFR 141.23(k)(1)
D 1688 A-17 (ASTM 2017e)	D 1688 A-02 (ASTM 2002c)	Copper	40 CFR 141.23(k)(1)
D 1688 C-17 (ASTM 2017e)	D 1688 C-02 (ASTM 2002c)	Copper	40 CFR 141.23(k)(1)
D 1293-18 (ASTM 2018a)	D 1293-99 (ASTM 1999)	pH	40 CFR 141.23(k)(1)
D 3454-18 (ASTM 2018b)	D 3454-97 (ASTM 1997)	Radium-226	40 CFR 141.25(a)

The ASTM methods are available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959 or <http://www.astm.org>.

C. Methods Developed by Vendors

1. Bio-Rad. Simultaneous Detection of Total Coliform Bacteria and Escherichia coli Using RAPID'E. coli 2 (REC2) in Drinking Water (Bio-Rad 2020). RAPID'E. coli 2 is a membrane-filter microbiological method for the simultaneous detection of total coliforms and E. coli in drinking water by filtration of a 100 mL sample of drinking water, and infusion of the filter

with a growth and indicator medium during incubation. Total coliforms and E. coli are detected as being present or absent in 100 mL samples of drinking water by enzymatic cleavage of chromogenic substances with the formation of colored compounds after incubation. Drinking water methods approved for measuring total coliforms under the Revised Total Coliform Rule (RTCR) (USEPA 2013) are listed at 40 CFR 141.852(a)(5). Methods approved for measuring E. coli in drinking water under the RTCR and under the Ground Water Rule (GWR) (USEPA 2006) are listed at 40 CFR 141.402(c)(2) and 40 CFR 141.852(a)(5), respectively.

RAPID'E. coli 2 is similar to other approved drinking water methods but uses proprietary chromogens for detection of total coliforms and E. coli. These chromogens result in distinctive colors for colonies of target bacteria. RAPID'E. coli 2 is able to detect total coliforms and E. coli in 24 ± 2 hours. Reagents for RAPID'E. coli 2 are available from the manufacturer. An Alternative Test Procedure (ATP) study was conducted to compare the method performance of RAPID'E. coli 2 to the performance of two approved methods, Standard Methods 9221 B (LTB/BGLB for total coliforms) and 9221 F (LTB/EC-MUG for E. coli) (APHA 1998). The

comparison study involved analyses of 200 drinking water samples—20 replicate samples that were inoculated with very low densities of chlorine-stressed total coliforms or *E. coli* obtained from 10 geographically dispersed waste waters. Method specificity was evaluated using an approximately 50:50 array of positive and negative cultures (as measured by RAPID *E. coli* 2), transferring these cultures to the reference methods, and observing the reaction on the reference media. The ATP validation study report (Bio-Rad, 2019) details the study design and method data evaluation. EPA has determined that RAPID *E. coli* 2 is equally effective relative to the approved Standard Method 9221 B for total coliforms under the RTCR, and Standard Method 9221 F for *E. coli* under the RTCR and GWR. The basis for this determination is discussed in Sinclair (2019). Therefore, EPA is approving the RAPID *E. coli* 2 method for determining total coliforms and *E. coli* in drinking water.

A copy of the RAPID *E. coli* 2 method is available from Bio-Rad Laboratories, 2000 Nobel Drive, Hercules, California 94547.

2. Maine Health Environmental Testing Laboratory (HETL). ME 531, Version 1.0. Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Drinking Water by LC-MS/MS (Maine HETL 2019a). ME 531 is a method for the measurement of carbofuran and oxamyl in drinking water by liquid chromatography tandem mass spectrometry (LC-MS/MS). In this method, an aliquot from a preserved drinking water sample is injected into a LC system coupled to a triple quadrupole mass spectrometer. Chromatographic separation is achieved through use of an appropriate liquid chromatography analytical column and detection is achieved by operating a triple quadrupole mass spectrometer in MS/MS mode. Quantitation is determined by comparing measured response to a calibration curve generated with known analyte standards and the internal standard technique.

Carbofuran and oxamyl are regulated drinking water contaminants as specified at 40 CFR 141.61(c). The currently approved methods for the analysis of carbofuran and oxamyl are listed in 40 CFR 141.24(e)(1). Approved methods EPA Method 531.1 (USEPA 1995) and EPA Method 531.2 (USEPA 2001) use liquid chromatography and post-column derivatization to convert carbofuran and oxamyl to form highly fluorescent isoindoles, followed by fluorescence detection, which is sensitive but nonspecific. ME 531

reduces the amount of hazardous waste produced because it measures the contaminants directly without the need for derivatization. The method also increases efficiency of analysis time and provides more accurate results due to the higher sensitivity and specificity of LC-MS/MS in the determination of carbofuran and oxamyl in finished drinking water.

A laboratory validation study was conducted to evaluate the performance of ME 531. Multiple drinking water matrixes were used in the validation study. Precision, accuracy, and quantitation limit data were collected from the drinking water matrixes fortified with varying concentrations of carbofuran and oxamyl standards. The results are summarized in the validation study report (Maine HETL 2019b). EPA has determined that ME 531 is equally effective relative to the approved EPA Methods 531.1 and 531.2. The basis for this determination is discussed in Adams 2020a. Therefore, EPA is approving ME 531 for the analysis for carbofuran and oxamyl in drinking water. ME 531 can be obtained from Maine Health and Environmental Testing Lab, 221 State Street, Augusta, Maine 04330.

3. Palintest. ChloroSense, Rev. 1.1. Free and Total Chlorine in Drinking Water by Amperometry using Disposable Sensors (Palintest 2020a). ChloroSense, Rev. 1.1 is a method for the determination of free available and total chlorine, including hypochlorous acid, hypochlorite ion, and undissociated chlorine, in drinking water by amperometry using pre-calibrated disposable sensors. In this method, free available chlorine reacts with 3,3',5,5' tetramethylbenzidine (TMB) and the oxidized product is electrochemically reduced at the surface of the free chlorine electrode. Free available chlorine and combined chlorine react with potassium iodide (KI) to liberate iodine. The iodine can be reduced electrochemically at the surface of the total chlorine electrode. The current that flows in each case is proportional to the amount of free available chlorine or total available chlorine. The current is converted to mg Cl/L by reference to calibration parameters stored in the instrument software.

The currently approved methods for the analysis of free and total chlorine in drinking water are listed in the regulations at 40 CFR 141.131(c)(1) and at 40 CFR 141.74(a)(2). ChloroSense Rev. 1.0 (Palintest 2009) was approved as being equally effective, relative to the approved Standard Method 4500-Cl D-00 (APHA 2000) for free and total

chlorine, in the November 10, 2009 expedited methods approval action (USEPA 2009). ChloroSense, Rev. 1.1 is a modified version of ChloroSense, Rev. 1.0 that incorporates new hardware. The revision also clarifies language about method flexibility that was incorporated in Rev. 1.0. The modifications made for Rev. 1.1 did not include any changes to the analytical reagents or method chemistry.

EPA reviewed the changes that were made and has determined that ChloroSense, Rev. 1.1 is equally effective relative to the previously approved ChloroSense, Rev. 1.0. The basis for this determination is discussed in Adams 2020b. Therefore, EPA is approving ChloroSense, Rev. 1.1, for the analysis of free and total chlorine in drinking water. ChloroSense, Rev. 1.1, can be obtained from Palintest Ltd, 400 Corporate Circle, Suite J, Golden, Colorado 80401.

4. Palintest. Method 1001, Rev. 1.1. Lead in Drinking Water by Differential Pulse Anodic Stripping Voltammetry (Palintest 2020b). Method 1001, Rev. 1.1 is a method for the determination of total recoverable lead in drinking water using differential pulse anodic stripping voltammetry (DPASV). In this method, a 50-mL aliquot of acid-preserved or acid-digested sample is neutralized with sodium hydroxide. A portion of the sample is decanted to a sample tube, buffered to pH 4, and conditioned with an excess of supporting electrolyte. A decomplexing agent is added to release lead from polyphosphate complexes. The lead in the conditioned sample is determined by DPASV, using a disposable sensor. This is achieved by concentrating the lead in the sample by plating onto the working electrode of the disposable sensor and then stripping it back into solution by raising the electrode potential. As the lead returns to solution a peak of current is detected. The peak potential identifies the metal, and the peak height is proportional to the concentration of the lead.

The currently approved methods for the analysis of total recoverable lead in drinking water are listed in 40 CFR 141.23(k)(1). Method 1001, Rev. 1.1 revises the currently approved Method 1001 (Palintest 1999) by allowing the use of new hardware, the streamlined Kemio instrumentation, which allows for the analysis of multiple contaminants. The modifications made for this method did not include any changes to the analytical reagents or method chemistry. Performance of Method 1001, Rev. 1.1, was compared with that of the approved Method 1001. The Kemio instrumentation in Method 1001, Rev. 1.1 had precision and

accuracy results comparable to those for instrumentation in the approved Method 1001. The Method Detection Limit (MDL) in the new method also improved from 2 µg/L to 1 µg/L using the Kemio instrumentation. EPA has determined that Method 1001, Rev. 1.1 is equally effective relative to the approved Method 1001. The basis for this determination is discussed in Adams 2020c. Therefore, EPA is approving Method 1001, Rev. 1.1 for the analysis of total recoverable lead in drinking water. Method 1001, Rev. 1.1 can be obtained from Palintest Ltd, 400 Corporate Circle, Suite J, Golden, Colorado 80401.

5. Palintest. ChlordioX Plus, Rev. 1.1. Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors (Palintest 2020c). ChlordioX Plus, Rev. 1.1 is a method for the determination of chlorine dioxide and chlorite in drinking water by amperometry using pre-calibrated disposable sensors. Chlorine dioxide present in the sample can be reduced directly at the surface of the sensor. The current that flows is directly proportional to the amount of chlorine dioxide in the sample. To determine chlorite, any chlorine dioxide in the sample must be removed. This is done by degassing the sample using a degassing unit. Chlorite is determined by first adding potassium iodide (KI) to the sample at a pH where the chlorite does not react but any free or total chlorine in the sample does react to liberate iodine. The amount of iodine released is reduced at the surface of the sensor. The current that flows is directly proportional to the amount of free and total chlorine in the sample (Reading A). The sample is then acidified by the addition of dilute hydrochloric acid. The iodide then reacts with chlorite and free and combined chlorine to release iodine. The amount of iodine released is reduced at the surface of the sensor. The current that flows is directly proportional to the amount of chlorite and free and combined chlorine in the sample (Reading B). The amount of chlorite can then be calculated by subtracting Reading A from Reading B. The current is converted to mg analyte/L by reference to calibration parameters stored in the instrument software.

The currently approved methods for the analysis of chlorine dioxide in drinking water are listed at 40 CFR 141.131(c)(1) and at 40 CFR 141.74(a)(2), and the approved methods for daily monitoring of chlorite are listed in 40 CFR 141.131(b)(1). ChlordioX Plus, Rev. 1.0 (Palintest 2013) was approved as being equally effective, relative to the approved

Standard Method 4500–ClO₂ E (APHA 1998) for the analysis of chlorine dioxide and chlorite in drinking water, in the June 19, 2014 expedited methods approval action (USEPA 2014).

ChlordioX Plus, Rev. 1.1 is a modified version of ChlordioX Plus, Rev. 1.0, which incorporates new hardware. The revision also clarifies language about method flexibility incorporated in the previous version. The modifications made for this method did not include any changes to the analytical reagents or method chemistry.

EPA reviewed the changes that were made and has determined that ChlordioX Plus, Rev. 1.1 is equally as effective relative to the approved ChlordioX Plus, Rev. 1.0. The basis for this determination is discussed in Adams 2020d. Therefore, EPA is approving ChlordioX Plus, Rev. 1.1 for the analysis of chlorine dioxide and daily monitoring of chlorite in drinking water. ChlordioX Plus, Rev. 1.1 can be obtained from Palintest Ltd, 400 Corporate Circle, Suite J, Golden, Colorado 80401.

6. Neogen. Modified Colitag™, Version 2.0. Modified Colitag™ Test Method for the Simultaneous Detection of Total Coliforms and *E. coli* in Water (Neogen 2020). Modified Colitag™ is a method that detects cleavage of chromogenic substrates to determine if total coliforms and *E. coli* are present in a 100-mL drinking water sample within 16 to 48 hours of incubation. The method can be used in a most-probable-number (MPN) format, provided the sum of all the individual portions of the sample total 100 mL.

Modified Colitag™, Version 2.0 is an updated revision of Modified Colitag™ (CPI International 2009), which is approved for total coliforms and *E. coli* at 40 CFR 141.852(a)(5). Modified Colitag™ was approved in EPA's June 8, 2010 expedited methods approval action (USEPA 2010) for determining *E. coli* under the Ground Water Rule at 40 CFR 141.402(c)(2).

Modified Colitag™, Version 2.0 provides expanded procedural guidance on the use of the various most-probable-number formats, including multiple tube MPN, the MPNPlate™, and the MPNTray™ options.

EPA reviewed the revisions that were made and determined Modified Colitag™, Version 2.0 is equally effective relative to the originally-approved Modified Colitag™. The basis for this determination is discussed in Best 2020. Therefore, EPA is approving Modified Colitag™, Version 2.0 for determination of total coliforms and *E. coli* in drinking water. Modified Colitag™, Version 2.0 can be obtained

from Neogen Corporation, 620 Leshar Place, Lansing, Michigan 48912.

IV. Statutory and Executive Order Reviews

As noted in Section II of this action, under the terms of SDWA section 1401(1), this streamlined method approval action is not a rule. Accordingly, the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3). Similarly, this action is not subject to the Regulatory Flexibility Act because it is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute. In addition, because this approval action is not a rule, but simply makes alternative testing methods available as options for monitoring under SDWA, EPA has concluded that other statutes and executive orders generally applicable to rulemaking do not apply to this approval action.

V. References

- Adams, W. 2020a. Memo to the record describing basis for expedited approval of Maine Health Environmental Testing Laboratory ME 531, Version 1.0. July 2, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Adams, W. 2020b. Memo to the record describing basis for expedited approval of Palintest ChloroSense, Rev. 1.1. July 9, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Adams, W. 2020c. Memo to the record describing the basis for expedited approval of Palintest Method 1001, Rev. 1.1. July 9, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Adams, W. 2020d. Memo to the record describing the basis for expedited approval of Palintest ChlordioX Plus, Rev. 1.1. July 9, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Alexander, M. 2021. Memo to the record describing basis for expedited approval of EPA Method 127. February 1, 2021. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Alexander, M., Waters, T., and Wahman, D. 2020. Alternate Test Procedure Validation Study Report for EPA Method 127: Determination of Monochloramine in Drinking Water. June 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- American Public Health Association (APHA). 1998. *20th Edition of Standard Methods for the Examination of Water and Wastewater*. American Public Health

- Association, 800 I Street NW, Washington, DC 20001-3710.
- American Public Health Association (APHA). Standard Method 4500-Cl D, G-00. Chlorine Residual. D. Amperometric Titration Method. G. DPD Colorimetric Method. Approved by Standard Methods Committee 2000. Standard Methods Online. (Available at <http://www.standardmethods.org>.)
- ASTM International. 1997. ASTM D 3454-97. Standard Test Method for Radium-226 in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 1999. ASTM D 1293-99. Standard Test Methods for pH of Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2002a. ASTM D 3697-02. Standard Test Method for Antimony in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2002b. ASTM D 3223-02. Standard Test Method for Total Mercury in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2002c. ASTM D 1688-02 A, C. Standard Test Methods for Copper in Water. A. Atomic Absorption, Direct. C. Atomic Absorption, Graphite Furnace. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2003a. ASTM D 6919-03. Standard Test Method for Determination of Dissolved Alkali and Alkaline Earth Cations and Ammonium in Water and Wastewater by Ion Chromatography. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2003b. ASTM D 4327-03. Standard Test Method for Anions in Water by Suppressed Ion Chromatography. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2017a. ASTM D 6919-17. Standard Test Method for Determination of Dissolved Alkali and Alkaline Earth Cations and Ammonium in Water and Wastewater by Ion Chromatography. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2017b. ASTM D 4327-17. Standard Test Method for Anions in Water by Suppressed Ion Chromatography. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2017c. ASTM D 3697-17. Standard Test Method for Antimony in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2017d. ASTM D 3223-17. Standard Test Method for Total Mercury in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2017e. ASTM D 1688-17 A, C. Standard Test Methods for Copper in Water. A. Atomic Absorption, Direct. C. Atomic Absorption, Graphite Furnace. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2018a. ASTM D 1293-18. Standard Test Methods for pH of Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- ASTM International. 2018b. ASTM 3454-18. Standard Test Method for Radium-226 in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (Available at <http://www.astm.org>.)
- Best, J. 2020. Memo to the record describing basis for expedited approval of Neogen Modified Colitag™, Version 2.0 method. July 30, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Bio-Rad. 2019. ATP Study Report for Side-By-Side Method Comparison of the Bio-Rad RAPID E. coli 2 Test Procedure and EPA Approved Reference Methods for Detection of Total Coliform Bacteria and E. coli in Drinking Water Using Membrane Filtration. September 4, 2019. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Bio-Rad. 2020. Simultaneous Detection of Total Coliform Bacteria and Escherichia coli Using RAPID E. coli 2 (REC2) in Drinking Water. May 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- CPI International. 2009. Modified Colitag™ Test Method for the Simultaneous Detection of E. coli and other Total Coliforms in Water. August 2009. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Maine Health Environmental Testing Laboratory. 2019a. ME 531, Version 1.0. Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Drinking Water by LC-MS/MS. September 2019. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Maine Health Environmental Testing Laboratory. 2019b. ME 531 Validation Study Report. 2019. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Neogen. 2020. Modified Colitag™ Test Method for the Simultaneous Detection of Total Coliforms and E. coli in Water. June 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest. 1999. Method 1001: Lead in Water by Differential Pulse Anodic Stripping Voltammetry. August 1999. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest. 2009. ChloroSense, Rev. 1.0. Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense. August 2009. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest. 2013. ChordioX Plus, Rev. 1.0. Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors. November 2013. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest. 2020a. ChloroSense, Rev. 1.1. Free and Total Chlorine in Drinking Water by Amperometry using Disposable Sensors. February 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest. 2020b. Method 1001, Rev. 1.1. Lead in Drinking Water by Differential Pulse Anodic Stripping Voltammetry. May 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Palintest 2020c. ChlordioX Plus, Rev. 1.1. Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors. February 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Sinclair, J. 2019. Memo to the record describing basis for expedited approval of Bio-Rad RAPID E.coli 2 method. November 4, 2019. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Smith, G. 2020a. Memo to the record describing basis for expedited approval of updated methods from ASTM International. May 4, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Smith, G. 2020b. Memo to the record describing basis for expedited approval of EPA Method 903.0, Revision 1.0. June 2, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- Smith, G. 2020c. Memo to the record describing basis for expedited approval of EPA Method 903.1. June 10, 2020. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- USEPA. 1980a. EPA Method 903.0. Alpha-emitting Radium Isotopes in Drinking Water in "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA-600/4-80-032, August 1980. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)
- USEPA. 1980b. EPA Method 903.1. Radium-226 in Drinking Water Radon Emanation Technique in "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA-600/4-80-032, August 1980. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 1989. Drinking Water; National Primary Drinking Water Regulations; Filtration, Disinfection, Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria. 54 FR 27486. June 29, 1989. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 1995. EPA Method 531.1, Rev. 3.1. Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization. 1995. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2001. EPA Method 531.2, Rev. 1.0. Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization. EPA-815-B-01-002, September 2001. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2006. National Primary Drinking Water Regulations: Groundwater Rule; Final Rule. 71 FR 65574. November 8, 2006. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2009. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants under the Safe Drinking Water Act; Analysis and Sampling Procedures; Final Rule. 74 FR 57908. November 10, 2009. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2010. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants under the Safe Drinking Water Act; Analysis and Sampling Procedures; Final Rule. 75 FR 32295. June 8, 2010. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2013. National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule; Final Rule. 78 FR 10270. February 13, 2013. (Available at <http://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2014. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants under the Safe Drinking Water Act; Analysis and Sampling Procedures; Final Rule. 79 FR 35081. June 19, 2014. (Available at <http://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079.)

USEPA. 2021a. EPA Method 903.0, Rev. 1.0. Alpha-emitting Radium Isotopes in Drinking Water. EPA 815-B-21-002. January 2021. (Available at <https://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079 and at the National Service Center for Environmental Publications.)

USEPA. 2021b. EPA Method 903.1, Rev. 1.0. Radium-226 in Drinking Water Radon Emanation Technique. EPA 815-B-21-003. January 2021. (Available at <http://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079 and at the National Service Center for Environmental Publications.)

USEPA. 2021c. EPA Method 127. Determination of Monochloramine Concentration in Drinking Water. EPA 815-B-21-004. January 2021. (Available at <http://www.regulations.gov>; docket ID No. EPA-HQ-OW-2021-0079 and at the National Service Center for Environmental Publications.)

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 141 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Amend appendix A to subpart C of part 141 as follows:

■ a. In the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)” revising the entries for “Antimony,” “Calcium,” “Copper,” “Fluoride,” “Lead,” “Magnesium,” “Mercury,” “Nitrate,” “Nitrite,”

“Orthophosphate,” “pH,” and “Sodium” ;

■ b. Revise the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24(e)(1)”;

■ c. In the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(a)” revise the entry for “Radium 226”;

■ d. Revise the table entitled “ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.74(a)(2)”;

■ e. In the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)” revise the entry for “Chlorite-daily monitoring as prescribed in 40 CFR 141.132(b)(2)(i)(A)”;

■ f. In the table entitled “ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)” revise the entries for “Free Chlorine,” “Total Chlorine,” and “Chlorine Dioxide”;

■ g. In the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.402(c)(2)” revise the entry for “E. coli”;

■ h. Revise the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.852(a)(5)”;

■ i. In the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)” revise the entries for “Chloride” and “Sulfate”;

■ j. Revise footnotes “2,” “3,” “4,” “8,” “9,” “13,” “14,” “16,” “17,” “24,” “25,” “26,” “28,” “29,” “48,” and “49”; and,

■ k. Add footnotes 53 through 61. The revisions and additions read as follows:

Appendix A to Subpart C of Part 141—Alternative Testing Methods Approved for Analyses Under the Safe Drinking Water Act

* * * * *

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23 (k)(1)

Contaminant	Methodology	EPA method	SM 21st edition ¹	SM 22nd edition ²⁸	SM 23rd edition ⁴⁹	SM online ³	ASTM ⁴	Other
Antimony	Hydride—Atomic Absorption							
	Atomic Absorption; Furnace		3113 B	3113 B	3113 B			D 3697-07, -12, -17.
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .				3113 B-04, B-10.		
Calcium	EDTA titrimetric		3500-Ca B	3500-Ca B	3500-Ca B			D 511-09, -14 A.
	Atomic Absorption; Direct Aspiration		3111 B	3111 B	3111 B			D 511-09, -14 B.
	Inductively Coupled Plasma		3120 B	3120 B	3120 B			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23 (k)(1)—Continued

Contaminant	Methodology	EPA method	SM 21st edition ¹	SM 22nd edition ²⁸	SM 23rd edition ⁴⁹	SM online ³	ASTM ⁴	Other
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .						
	Ion Chromatography						D 6919-09, -17.	
	* * *	*	*	*	*	*	*	
Copper	Atomic Absorption; Furnace		3113 B	3113 B	3113 B	3113 B-04, B-10.	D 1688-07, -12 C, -17 C.	
	Atomic Absorption; Direct Aspiration		3111 B	3111 B	3111 B		D 1688-07, -12 A, -17 A.	
	Inductively Coupled Plasma		3120 B	3120 B	3120 B.			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .						
	Colorimetry							Hach Method 8026. ³⁵ Hach Method 10272. ³⁶
	* * *	*	*	*	*	*	*	
Fluoride	Ion Chromatography		4110 B	4110 B	4110 B		D 4327-11, -17.	
	Manual Distillation; Colorimetric SPADNS.		4500-F ⁻ B, D.	4500-F ⁻ B, D.	4500-F ⁻ B, D.			
	Manual Electrode		4500-F ⁻ C	4500-F ⁻ C	4500-F ⁻ C		D 1179-04, 10 B, 16 B.	
	Automated Alizarin		4500-F ⁻ E	4500-F ⁻ E	4500-F ⁻ E.			
	Arsenite-Free Colorimetric SPADNS							Hach SPADNS. 2 Method 10225. ²²
Lead	Atomic Absorption; Furnace		3113 B	3113 B	3113 B	3113 B-04, B-10.	D 3559-08 D, -15 D.	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .						
	Differential Pulse Anodic Stripping Voltametry.							Method 1001, Rev. 1.1 ⁵⁷
Magnesium	Atomic Absorption		3111 B	3111 B	3111 B		D 511-09, -14 B.	
	Inductively Coupled Plasma		3120 B	3120 B	3120 B.			
	Complexation Titrimetric Methods		3500-Mg B	3500-Mg B	3500-Mg B		D 511-09, -14 A.	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .						
	Ion Chromatography						D 6919-09, -17.	
Mercury	Manual, Cold Vapor		3112 B	3112 B	3112 B	3112 B-09 ..	D 3223-12, -17.	
	* * *	*	*	*	*	*	*	
Nitrate	Ion Chromatography		4110 B	4110 B	4110 B		D 4327-11, -17.	
	Automated Cadmium Reduction		4500-NO ₃ ⁻ F.	4500-NO ₃ ⁻ F.	4500-NO ₃ ⁻ F.			
	Manual Cadmium Reduction		4500-NO ₃ ⁻ E.	4500-NO ₃ ⁻ E.	4500-NO ₃ ⁻ E.			
	Ion Selective Electrode		4500-NO ₃ ⁻ D.	4500-NO ₃ ⁻ D.	4500-NO ₃ ⁻ D.			
	Reduction/Colorimetric							Systema Easy (1-Reagent). ⁸ NECi Nitrate-Reductase. ⁴⁰
	Colorimetric; Direct							Hach TNTplus™ 835/836 Method 10206. ²³
	Capillary Ion Electrophoresis						D 6508-15.	
Nitrite	Ion Chromatography		4110 B	4110 B	4110 B		D 4327-11, -17.	
	Automated Cadmium Reduction		4500-NO ₃ ⁻ F.	4500-NO ₃ ⁻ F.	4500-NO ₃ ⁻ F.			
	Manual Cadmium Reduction		4500-NO ₃ ⁻ E.	4500-NO ₃ ⁻ E.	4500-NO ₃ ⁻ E.			
	Spectrophotometric		4500-NO ₂ ⁻ B.	4500-NO ₂ ⁻ B.	4500-NO ₂ ⁻ B.			
	Reduction/Colorimetric							Systema Easy (1-Reagent). ⁸ NECi Nitrate-Reductase. ⁴⁰
	Capillary Ion Electrophoresis						D 6508-15.	
Ortho-phosphate	Ion Chromatography		4110 B	4110 B	4110 B		D 4327-11, -17.	
	Colorimetric, ascorbic acid, single reagent.		4500-P E	4500-P E	4500-P E	4500-P E-99.		
	Colorimetric, Automated, Ascorbic Acid		4500-P F	4500-P F	4500-P F	4500-P F-99.		Thermo Fisher Discrete Analyzer. ⁴¹
	Capillary Ion Electrophoresis						D 6508-15.	
pH	Electrometric	150.3 ⁴⁸	4500-H + B	4500-H + B	4500-H + B		D 1293-12, -18.	
	* * *	*	*	*	*	*	*	
Sodium	Atomic Absorption; Direct Aspiration		3111 B	3111 B	3111 B.			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2 ² .						
	Ion Chromatography						D 6919-09, -17.	
	* * *	*	*	*	*	*	*	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24(e)(1)

Contaminant	Methodology	EPA method	SM 21st edition ¹	SM 22nd edition ²⁸ , SM 23rd edition ⁴⁹	SM online ³	Other
Benzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Carbon tetrachloride	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Chlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,2-Dichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,4-Dichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,2-Dichloroethane	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
cis-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
trans-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Dichloromethane	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,2-Dichloropropane	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Ethylbenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Styrene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Tetrachloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,1,1-Trichloroethane	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Trichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Toluene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,2,4-Trichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,1-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
1,1,1-Trichloroethane	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Vinyl chloride	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
Xylenes (total)	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3 ⁹ , 524.4. ²⁹ .				
2,4-D	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	
2,4,5-TP (Silvex)	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	
.....	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	.....	525.3. ²⁴ .			
Atrazine	Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC/ESI-MS/MS).	536. ²⁵ .				
.....	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ , 523. ²⁶ .				
Benzo(a)pyrene	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Carbofuran	High-performance liquid chromatography (HPLC) with post-column derivatization and fluorescence detection.	.....	6610 B	6610 B	6610 B-04.	
.....	Liquid Chromatography/Mass Spectrometry .....	.....				ME 531. ⁵⁸
.....	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Dalapon	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS).	557. ¹⁴ .				
.....	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	
Di(2-ethylhexyl)adipate	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Di(2-ethylhexyl)phthalate.	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Dibromochloropropane (DBCP).	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3. ⁹ .				
Dinoseb	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	
Endrin	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Ethyl dibromide (EDB)	Purge & Trap/Gas Chromatography/Mass Spectrometry ...	524.3. ⁹ .				
Glyphosate	High-Performance Liquid Chromatography (HPLC) with Post-Column Derivatization and Fluorescence Detection.	.....	6651 B	6651 B	6651 B-00, B-05.	
Heptachlor	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Heptachlor Epoxide	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Hexachlorobenzene	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Hexachlorocyclopentadiene.	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Lindane	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Methoxychlor	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Oxamyl	High-performance liquid chromatography (HPLC) with post-column derivatization and fluorescence detection.	.....	6610 B	6610 B	6610 B-04.	
.....	Liquid Chromatography/Mass Spectrometry .....	.....				ME 531. ⁵⁸
PCBs (as Aroclors)	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Pentachlorophenol	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	
.....	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Picloram	Gas Chromatography/Electron Capture Detection (GC/ECD).	.....	6640 B	6640 B	6640 B-01, B-06.	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24(e)(1)—Continued

Contaminant	Methodology	EPA method	SM 21st edition ¹	SM 22nd edition ²⁸ , SM 23rd edition ⁴⁹	SM online ³	Other
Simazine	Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC/ESI-MS/MS).	536. ²⁵ .				
	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3 ²⁴ , 523. ²⁶ .				
Toxaphene	Solid Phase Extraction/Gas Chromatography/Mass Spectrometry (GC/MS).	525.3. ²⁴ .				
Total Trihalomethanes	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3 ⁹ , 524.4. ²⁹ .				

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(a)

Contaminant	Methodology	EPA method	SM 21st edition ¹	SM 22nd edition ²⁸ , SM 23rd edition ⁴⁹	ASTM ⁴	SM online ³
Radium 226	Radon emanation	903.1, Rev. 1.0 ⁵³ ...	7500-Ra C ...	7500-Ra C ...	D 3454-05, -18.	
	Radiochemical	903.0, Rev. 1.0 ⁵⁴ ...	7500-Ra B ...	7500-Ra B ...	D 2460-07.	
	Gamma Spectrometry			7500-Ra E ...		7500-Ra E-07.

* * * * *

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.74(a)(2)

Residual	Methodology	EPA methods	SM 21st edition ¹	SM 22nd edition ²⁸ , SM 23rd edition ⁴⁹	ASTM ⁴	Other
Free Chlorine	Amperometric Titration		4500-CI D	4500-CI D	D 1253-08, -14.	
	DPD Ferrous Titrimetric.		4500-CI F	4500-CI F.		
	DPD Colorimetric		4500-CI G	4500-CI G		Hach Method 10260. ³¹
	Indophenol Colorimetric.					Hach Method 10241. ³⁴
	Syringaldazine (FACTS).		4500-CI H	4500-CI H.		
	On-line Chlorine Analyzer.	334.0 ¹⁶ .				
Total Chlorine	Amperometric Sensor					ChloroSense ¹⁷ , ChloroSense Rev. 1.1. ⁵⁹
	Amperometric Titration		4500-CI D	4500-CI D	D 1253-08, -14.	
	Amperometric Titration (Low level measurement).		4500-CI E	4500-CI E.		
	DPD Ferrous Titrimetric.		4500-CI F	4500-CI F.		
	DPD Colorimetric		4500-CI G	4500-CI G		Hach Method 10260. ³¹
	Iodometric Electrode ..		4500-CI I	4500-CI I.		
	On-line Chlorine Analyzer.	334.0 ¹⁶ .				
	Amperometric Sensor					ChloroSense ¹⁷ , ChloroSense, Rev. 1.1. ⁵⁹
	Indophenol Colorimetric.	127. ⁵⁵ .				
Chlorine Dioxide	Amperometric Titration		4500-CIO ₂ C	4500-CIO ₂ C.		
	Amperometric Titration		4500-CIO ₂ E	4500-CIO ₂ E.		
	Amperometric Sensor					ChlordioX Plus ³² , ChlordioX Plus, Rev. 1.1. ⁶⁰
Ozone	Indigo Method		4500-O ₃ B ...	4500-O ₃ B.		

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)

Contaminant	Methodology	EPA method	ASTM ⁴	SM online ³	SM 21st edition ¹	SM 22nd edition ²⁸ , SM 23rd Edition ⁴⁹	Other
Chlorite—daily monitoring as prescribed in 40 CFR 141.132(b)(2)(i)(A).	Amperometric Titration ..				4500-CIO ₂ E	4500-CIO ₂ E	ChlordioX Plus ³² , ChlordioX Plus, Rev. 1.1. ⁶⁰
	Amperometric Sensor						

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)

Residual	Methodology	SM 21st edition ¹	SM 22nd edition, ²⁸ SM 23rd edition ⁴⁹	ASTM ⁴	Other
Free Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D	D 1253–08, –14.	
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F		
	DPD Colorimetric	4500–Cl G	4500–Cl G		
	Indophenol Colorimetric				
	Syringaldazine (FACTS)	4500–Cl H	4500–Cl H		
	Amperometric Sensor				ChloroSense ¹⁷ , ChloroSense, Rev. 1.1, ⁵⁹
	On-line Chlorine Analyzer			EPA 334.0. ¹⁶	
Total Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D	D 1253–08, –14.	
	Low level Amperometric Titration.	4500–Cl E	4500–Cl E		
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F		
	DPD Colorimetric	4500–Cl G	4500–Cl G		
	Iodometric Electrode	4500–Cl I	4500–Cl I		
	Amperometric Sensor				ChloroSense, ¹⁷ ChloroSense, Rev. 1.1, ⁵⁹
	On-line Chlorine Analyzer			EPA 334.0. ¹⁶	
Chlorine Dioxide	Amperometric Method II	4500–ClO ₂ E	4500–ClO ₂ E		ChloroX Plus, ³² ChloroX Plus, Rev. 1.1. ⁶⁰
	Amperometric Sensor				

* * * * *

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.402(c)(2)

Organism	Methodology	SM 20th edition ⁶	SM 21st edition ¹	SM 22nd edition ²⁸	SM 23rd edition ⁴⁹	SM online ³	Other
<i>E. coli</i>	Colilert		9223 B	9223 B	9223 B	9223 B–97, B–04.	
	Colisure		9223 B	9223 B	9223 B	9223 B–97, B–04.	
	Colilert–18	9223 B	9223 B	9223 B	9223 B	9223 B–97, B–04.	
	Readycult [®]						Readycult [®] , ²⁰
	Colitag						Modified Colitag [™] , ¹³ Modified Colitag [™] , Version 2.0, ⁶¹ Chromocult [®] , ²¹
	Chromocult [®]						
	EC–MUG			9221 F	9221 F	9221 F–06.	
	NA–MUG				9222 I.		
	m-ColiBlue24 Test				9222 J.		
	Tecta EC/TC ^{39 43} , RAPID'E.coli 2 ⁵⁶ .						

* * * * *

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.852(a)(5)

Organism	Methodology category	Method	SM 20th, 21st editions ^{1 6}	SM 22nd edition ²⁸	SM 23rd edition ⁴⁹	SM online ³
Total Coliforms	Lactose Fermentation Methods.	Standard Total Coliform Fermentation Technique.		9221 B.1, B.2 ..	9221 B.1, B.2, B.3, B.4.	9221 B.1, B.2–06.
		Presence-Absence (P–A) Coliform Test.				
	Membrane Filtration Methods.	Standard Total Coliform Membrane Filter Procedure using Endo Media.			9221 D.1, D.2, D.3.	
		Simultaneous Detection of Total Coliforms and <i>E. coli</i> by Dual Chromogen Membrane Filter Procedure (using mColiBlue24 medium).			9222 B, C.	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.852(a)(5)—Continued

Organism	Methodology category	Method	SM 20th, 21st editions ^{1,6}	SM 22nd edition ²⁸	SM 23rd edition ⁴⁹	SM online ³	
<i>Escherichia coli</i>	Enzyme Substrate Methods	Simultaneous Detection of Total Coliform Bacteria and <i>Escherichia coli</i> Using RAPID [®] <i>E. coli</i> (REC2) in Drinking Water. ⁵⁶					
		Colilert [®]		9223 B	9223 B	9223 B-04	
		Colisure [®]		9223 B	9223 B	9223 B-04.	
	Enzyme Substrate Methods	Colilert-18	9223 B	9223 B	9223 B	9223 B-04.	
		Tecta EC/TC. ^{33,43}					
		Modified Colitag [™] , Version 2.0. ⁶¹					
	Enzyme Substrate Methods	EC-MUG medium			9221 F.1	9221 F.1	9221 F.1-06.
		EC broth with MUG (EC-MUG).				9222 H.	
		NA-MUG medium				9222 I.	
	Simultaneous Detection of Total Coliforms and <i>E. coli</i> by Dual Chromogen Membrane Filter Procedure. Membrane Filtration Method	mColiBlue24 medium				9222 J.	
Simultaneous Detection of Total Coliform Bacteria and <i>Escherichia coli</i> Using RAPID [®] <i>E. coli</i> (REC2) in Drinking Water. ⁵⁶							
Enzyme Substrate Methods	Colilert [®]			9223 B	9223 B	9223 B-04.	
	Colisure [®]			9223 B	9223 B	9223 B-04.	
	Colilert-18	9223 B		9223 B	9223 B	9223 B-04.	
	Tecta EC/TC. ^{33,43}						
Enzyme Substrate Methods	Modified Colitag [™] , Version 2.0. ⁶¹						

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)

Contaminant	Methodology	EPA method	ASTM ⁴	SM 21st edition ¹	SM 22nd edition, ²⁸ SM 23rd edition ⁴⁹	SM online ³
Chloride	Silver Nitrate Titration		D 512-04 B, 12 B.	4500-Cl ⁻ B	4500-Cl ⁻ B.	
	Ion Chromatography		D 4327-11, -17	4110 B	4110 B.	
	Potentiometric Titration			4500-Cl ⁻ D	4500-Cl ⁻ D.	
Sulfate	Ion Chromatography		D 4327-11, -17	4110 B	4110 B.	
	Gravimetric with ignition of residue			4500-SO ₄ ²⁻ C	4500-SO ₄ ²⁻ C ..	4500-SO ₄ ²⁻ C-97.
	Gravimetric with drying of residue			4500-SO ₄ ²⁻ D	4500-SO ₄ ²⁻ D ..	4500-SO ₄ ²⁻ D-97.
	Turbidimetric method		D 516-07, 11, 16	4500-SO ₄ ²⁻ E ..	4500-SO ₄ ²⁻ E ..	4500-SO ₄ ²⁻ E-97.
	Automated methylthymol blue method			4500-SO ₄ ²⁻ F ..	4500-SO ₄ ²⁻ F ..	4500-SO ₄ ²⁻ F-97.

¹ Standard Methods for the Examination of Water and Wastewater, 21st edition (2005). Available from American Public Health Association, 800 I Street NW, Washington, DC 20001-3710.

² EPA Method 200.5, Revision 4.2. "Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry." 2003. EPA/600/R-06/115. (Available at <http://www.epa.gov/water-research/epa-drinking-water-research-methods>.)

³ Standard Methods Online are available at <http://www.standardmethods.org>. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

⁴ Available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or <http://astm.org>. The methods listed are the only alternative versions that may be used.

⁶ Standard Methods for the Examination of Water and Wastewater, 20th edition (1998). Available from American Public Health Association, 800 I Street NW, Washington, DC 20001-3710.

⁸ Systea Easy (1-Reagent). "Systea Easy (1-Reagent) Nitrate Method," February 4, 2009. Available at <https://www.nemi.gov> or from Systea Scientific, LLC., 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523.

⁹ EPA Method 524.3, Version 1.0. "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry." June 2009. EPA 815-B-09-009. Available at <https://www.nemi.gov>.

¹³ Modified Colitag[™] Method, "Modified Colitag[™] Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water (ATP D05-0035)," August 28, 2009. Available at <https://www.nemi.gov> or from CPI International, 5580 Skylane Boulevard, Santa Rosa, CA 95403.

¹⁴ EPA Method 557. "Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS)," September 2009. EPA 815-B-09-012. Available at <https://www.nemi.gov>.

¹⁶ EPA Method 334.0. "Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer," September 2009. EPA 815-B-09-013. Available at <https://www.nemi.gov>.

¹⁷ ChloroSense. "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," August 2009. Available at <https://www.nemi.gov> or from Palintest Ltd, 1455 Jamike Avenue (Suite 100), Erlanger, KY 41018.

²⁰ ReadyCult® Method, "ReadyCult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," January, 2007. Version 1.1. Available from EMD Millipore (division of Merck KGaA, Darmstadt, Germany), 290 Concord Road, Billerica, MA 01821.

²¹ Chromocult® Method, "Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," November, 2000. Version 1.0. EMD Millipore (division of Merck KGaA, Darmstadt, Germany), 290 Concord Road, Billerica, MA 01821.

²² Hach Company. "Hach Company SPADNS 2 (Arsenite-Free) Fluoride Method 10225—Spectrophotometric Measurement of Fluoride in Water and Wastewater," January 2011. 5600 Lindbergh Drive, P.O. Box 389, Loveland, Colorado 80539.

²³ Hach Company. "Hach Company TNTplus™ 835/836 Nitrate Method 10206—Spectrophotometric Measurement of Nitrate in Water and Wastewater," January 2011. 5600 Lindbergh Drive, P.O. Box 389, Loveland, Colorado 80539.

²⁴ EPA Method 525.3. "Determination of Semivolatile Organic Chemicals in Drinking Water by and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS)," February 2012. EPA/600/R-12/010. Available at <http://www.epa.gov/water-research/epa-drinking-water-research-methods>.

²⁵ EPA Method 536. "Determination of Triazine Pesticides and their Degradates in Drinking Water by Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC/ESI-MS/MS)," October 2007. EPA 815-B-07-002. Available at the National Service Center for Environmental Publications (EPA Method 536).

²⁶ EPA Method 523. "Determination of Triazine Pesticides and their Degradates in Drinking Water by Gas Chromatography/Mass Spectrometry (GC/MS)." February 2011. EPA 815-R-11-002. Available at the National Service Center for Environmental Publications (EPA Method 523).

²⁸ *Standard Methods for the Examination of Water and Wastewater*, 22nd edition (2012). Available from American Public Health Association, 800 I Street NW, Washington, DC 20001-3710.

²⁹ EPA Method 524.4. Version 1.0. "Measurement of Purgeable Organic Compounds in Water by Gas Chromatography/Mass Spectrometry using Nitrogen Purge Gas." May 2013. EPA 815-R-13-002. Available at the National Service Center for Environmental Publications (EPA Method 524.4).

³¹ Hach Company. "Hach Method 10260—Determination of Chlorinated Oxidants (Free and Total) in Water Using Disposable Planar Reagent-filled Cuvettes and Mesofluidic Channel Colorimetry," April 2013. 5600 Lindbergh Drive, P.O. Box 389, Loveland, CO 80539.

³² ChlorDioX Plus. "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors," November 2013. Available from Palintest Ltd, 1455 Jamike Avenue (Suite 100), Erlanger, KY 41018.

³³ Tecta EC/TC. "Tecta™ EC/TC Medium and Tecta™ Instrument: A Presence/Absence Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* (*E. coli*) in Drinking Water," version 1.0, May 2014. Available from Pathogen Detection Systems, Inc., 382 King Street East, Kingston, Ontario, Canada, K7K 2Y2.

³⁴ Hach Company. "Hach Method 10241—Spectrophotometric Measurement of Free Chlorine (Cl₂) in Drinking Water," November 2015. Revision 1.2. 5600 Lindbergh Drive, P.O. Box 389, Loveland, CO 80539.

³⁵ Hach Company. "Hach Method 8026—Spectrophotometric Measurement of Copper in Finished Drinking Water," December 2015. Revision 1.2. 5600 Lindbergh Drive, P.O. Box 389, Loveland, CO 80539.

³⁶ Hach Company. "Hach Method 10272—Spectrophotometric Measurement of Copper in Finished Drinking Water," December 2015. Revision 1.2. 5600 Lindbergh Drive, P.O. Box 389, Loveland, CO 80539.

⁴⁰ Nitrate Elimination Company, Inc. (NECi). "Method for Nitrate Reductase Nitrate-Nitrogen Analysis of Drinking Water," February 2016. Superior Enzymes, Inc., 334 Hecla Street, Lake Linden, Michigan 49945.

⁴¹ Thermo Fisher. "Thermo Fisher Scientific Drinking Water Orthophosphate Method for Thermo Scientific Gallery Discrete Analyzer," February 2016. Revision 5. Thermo Fisher Scientific, Ratastie 2, 01620 Vantaa, Finland.

⁴³ Tecta EC/TC. "Tecta™ EC/TC Medium and the Tecta™ Instrument: A Presence/Absence Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* (*E. coli*) in Drinking Water," version 2.0, February 2017. Available from Pathogen Detection Systems, Inc., 382 King Street East, Kingston, Ontario, Canada, K7K 2Y2.

⁴⁸ EPA Method 150.3. "Determination of pH in Drinking Water," February 2017. EPA 815-B-17-001. Available at the National Service Center for Environmental Publications (EPA Method 150.3).

⁴⁹ *Standard Methods for the Examination of Water and Wastewater*, 23rd edition (2017). Available from American Public Health Association, 800 I Street NW, Washington, DC 20001-3710.

⁵³ EPA Method 903.1, Rev. 1.0. "Radium-226 in Drinking Water Radon Emanation Technique." January 2021. EPA 815-B-21-003. Available at the National Service Center for Environmental Publications (EPA Method 903.1).

⁵⁴ EPA Method 903.0, Rev. 1.0. "Alpha-Emitting Radium Isotopes in Drinking Water." January 2021. EPA 815-B-21-002. Available at the National Service Center for Environmental Publications (EPA Method 903.0).

⁵⁵ EPA Method 127. "Determination of Monochloramine Concentration in Drinking Water." January 2021. EPA 815-B-21-004. Available at the National Service Center for Environmental Publications (EPA Method 127).

⁵⁶ Bio-Rad. "Simultaneous Detection of Total Coliform Bacteria and *Escherichia coli* using RAPID[®] E. coli 2 (REC2) in Drinking Water." May 2020. Bio-Rad Laboratories, 2000 Nobel Drive, Hercules, California 94547.

⁵⁷ Method 1001, Rev. 1.1. "Lead in Drinking Water by Differential Pulse Anodic Stripping Voltammetry." May 2020. Palintest Ltd, 400 Corporate Circle, Suite J, Golden, CO 80401.

⁵⁸ ME 531, Version 1.0. "Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Drinking Water by LC-MS/MS. September 2019. Maine Health Environmental Testing Laboratory, 221 State Street, Augusta, ME 04330.

⁵⁹ ChloroSense, Rev. 1.1. "Free and Total Chlorine in Drinking Water by Amperometry using Disposable Sensors." February 2020. Palintest Ltd, 400 Corporate Circle, Suite J, Golden, CO 80401.

⁶⁰ ChlorDioX Plus, Rev. 1.1. "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry using Disposable Sensors." February 2020. Palintest Ltd, 400 Corporate Circle, Suite J, Golden, CO 80401.

⁶¹ Modified Colitag™, Version 2.0. "Modified Colitag™ Test Method for the Simultaneous Determination of Total Coliforms and *E. coli* in Water." June 2020. Neogen Corporation, 620 Leshar Place, Lansing, MI 48912.

[FR Doc. 2021-10974 Filed 5-25-21; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2021-0003; Internal Agency Docket No. FEMA-8681]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current

participation status of a community can be obtained from FEMA's CSB available at www.fema.gov/flood-insurance/work-with-nfip/community-status-book. Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notices such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | FEMA.gov. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP

Coordinating Office directly for assistance.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at www.fema.gov.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue

to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at fema.gov.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this

rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region 5				
Michigan:				
Arcadia, Township of, Manistee County	260306	September 24, 1974, Emerg; September 1, 1986, Reg; June 2, 2021, Susp.	June 2, 2021	June 2, 2021.
Manistee, City of, Manistee County	260131	December 2, 1974, Emerg; March 18, 1987, Reg; June 2, 2021, Susp.	.....do*.	
Manistee, Township of, Manistee County.	260132	August 19, 1974, Emerg; November 15, 1989, Reg; June 2, 2021, Susp.	.....do.	

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Stronach, Township of, Manistee County.	260801	April 13, 1987, Emerg; September 30, 1988, Reg; June 2, 2021, Susp.	.....do.	

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Eric J. Letvin,
Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.
[FR Doc. 2021–10899 Filed 5–25–21; 8:45 am]
BILLING CODE 9110–12–P

Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.
DATES: Effective May 26, 2021, through December 31, 2021.
FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

published a rule finalizing the 2020 specifications (85 FR 8765) and restating the projected 2021 specifications.

At the end of each fishing year, we evaluate available catch information and determine if the ACL for either commercial or recreational sector of the fishery has been exceeded. If the commercial ACL is exceeded, the regulations at 50 CFR 648.293 require a pound-for-pound reduction in a subsequent fishing year. On November 21, 2020, we closed the commercial blue-line tilefish fishery because we projected it reached 100 percent of the TAL (85 FR 74919; November 24, 2020). Final 2020 data only recently became available because of the time needed to allow any late reports from fishing vessels and dealers to be submitted and to ensure all reports go through a thorough quality control process. When final 2020 catch data were analyzed, we determined the commercial sector had landed 108 percent of the commercial TAL. There is no new biological information that would require altering the projected 2021 specifications beyond adjusting the commercial ACL for the overage that occurred in 2020. As a result, we are announcing the final specifications for fishing year 2021, as projected in the final rules implementing 2019 and 2020 specifications and adjusted for the commercial overage in fishing year 2020 (See Table 1).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210520–0112]

RTID 0648–XX071

Fisheries of the Northeastern United States; Blue-line Tilefish Fishery; 2021 Specifications

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

ACTION: Final rule.

SUMMARY: We are implementing 2021 specifications for the Mid-Atlantic blue-line tilefish fishery, including the annual catch and total allowable landings limits. This action establishes allowable harvest levels and other management measures to prevent overfishing, consistent with the

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the blue-line tilefish fishery north of the Virginia/North Carolina border under the Tilefish Fishery Management Plan (FMP), which outlines the Council’s process for setting annual specifications. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N, which require the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, for up to 3 years at a time. On November 19, 2018, we proposed 2019 specifications for the blue-line tilefish fishery and announced projected specifications for 2020 and 2021 based on Council recommendations (83 FR 58219). Public comment was accepted through December 4, 2018. We published a final rule implementing the 2019 specifications on February 12, 2019 (84 FR 3341). On February 18, 2020, we

TABLE 1—2021 BLUELINE TILEFISH SPECIFICATIONS

	2021
ABC—North of NC/VA line	100,520 lb (45.6 mt)
Recreational ACL/ACT	73,380 lb (33.3 mt)
Assumed Recreational Discards	1,468 lb (0.7 mt)
Recreational TAL	71,912 lb (32.6 mt)
Commercial ACL/ACT	27,140 lb (12.3 mt)
Assumed Commercial Discards	271 lb (0.1 mt)
Commercial Overage Adjustment	1,965 lb (0.9 mt)
Commercial TAL	24,924 lb (11.3 mt)

All other management measures in the blue-line tilefish fishery, including commercial and recreational possession limits, will remain unchanged for the 2021 fishing year.

The FMP allows for the previous year’s specifications to remain in place until replaced by a subsequent specifications action (rollover provision).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined

that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA finds it is contrary to the public interest to provide for prior notice and an opportunity for public comment, under to authority at 5 U.S.C. 553(b)(B). The proposed rule for 2019–2021 specifications (83 FR 58219; November 19, 2018) provided the public with the opportunity to comment on the specifications for 2019, and projected 2020 and 2021 specifications. All comments received were addressed in the final rule (84 FR 3341; February 12, 2019). A final rule on February 18, 2020 (85 FR 8765), finalized the 2020 specifications and restated the projected 2021 specifications. The only change to the specifications for fishing year 2021 is a small adjustment to the commercial ACL for an overage in 2020 that is required by the regulations. The public has been aware of the overage in the commercial sector of the fishery through information on a public quota monitoring web page and through an announcement at the Council meeting in April. Implementing this adjustment to the 2021 fishing year is a necessary accountability measure that the FMP designed to prevent overfishing, and doing so in a timely manner is necessary to reduce the likelihood of additional overages this year.

Similarly, the need to implement these measures in a timely manner, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. The public and fishing industry participants expect this action because we previously alerted the public in the proposed and final rules that we would conduct this review in interim years of the status quo multi-year specifications and announce the final quota. Final analysis of 2020 data only recently became available because of the time needed to allow any late reports from fishing vessels and dealers to be submitted and to ensure all reports go through a thorough quality control process. Implementing the new commercial TAL as soon as possible will allow the public to monitor landings against this new limit through our weekly quota monitoring updates available on our website for the remaining six months in the 2021 fishing year. This could allow the industry to anticipate or even avoid a closure by slowing the pace of as landings as they approach the TAL.

This final rule is exempt from review under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation for the Department of Commerce certified to the Small Business Administration that the 2019–2021 blue-line tilefish specifications rulemaking would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. No comments were received that would change the initial certification. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

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

Dated: May 20, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–11061 Filed 5–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210521–0115]

RIN 0648–BK61

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2021 Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS established fishery management measures for the 2021 ocean salmon fisheries off Washington, Oregon, and California, and the 2022 salmon seasons opening earlier than May 16, 2022. The final rule, published in the **Federal Register** on May 14, 2021, included a transcription error in the management measures for the recreational salmon fishery in the area from Pigeon Point, CA, to the U.S./Mexico border (Monterey management

area). This action corrects that error by adding the language that was omitted from the May 14, 2021, rule.

DATES: Effective May 24, 2021.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION: The final rule published May 14, 2021, (86 FR 26425), describes annual management measures for managing the harvest of salmon in the ocean waters under the jurisdiction of the Pacific Fishery Management Council (Council). This document corrects an error in the May 14, 2021 rule by adding management measures for the recreational salmon fishery in the Monterey management area to make the 2021 salmon fisheries consistent with the Council's recommendations.

Need for Correction

The 2021 salmon management measures (86 FR 26425, May 14, 2021), Section 2, part A describes the recreational salmon fisheries in the Monterey management area. There is a transcription error in this part of the rule, rendering it inconsistent with the Council's recommendations for the 2021 salmon management measures, as adopted at their April 2021 meeting. The May 14, 2021 rule omitted the May 16–September 30, 2021 fishery in the Monterey management area, which was recommended by the Council.

Correction

In FR Doc. 2021–10035, appearing on page 26425, in the **Federal Register** of Friday, May 14, 2021, the following correction is made:

On page 26435, in the third column, the description of the recreational salmon fishery from Pigeon Point to U.S./Mexico border (Monterey) management area is corrected to read as follows:

—Pigeon Point to U.S./Mexico border (Monterey)

April 3–May 15 (C.6). Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

May 16–September 30 (C.6). Open seven days per week. All salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2022, season opens April 2 for all salmon except coho salmon, two salmon per day (C.1). Chinook salmon minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2021 (C.2, C.3). This

opening could be modified following Council review at its March 2022 meeting.

Classification

NMFS is issuing this rule pursuant to 305(d) of the MSA. The reason for using this regulatory authority is: In a previous action taken pursuant to section 304(b), the Council designed the Fishery Management Plan (FMP) to authorize NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 660.408. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c). The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Salmon FMP and other applicable law.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for additional public comment for this action as notice and comment would be unnecessary and contrary to the public interest. Notice and comment are unnecessary and contrary to the public interest because this action simply corrects an error in the final rule and makes the rule consistent with the Council's recommended action. This correction does not affect the results of analyses conducted to support management decisions in the salmon fishery nor change the total catch of salmon. In addition, it is important that the error be corrected as quickly as possible. The correction eliminates an inconsistency between the May 14, 2021 rule and the Council's recommendation that may lead to confusion for the public and potentially prevent the prosecution of fisheries. No aspect of this action is controversial and no change in operating practices in the fishery is required. For the same reasons, pursuant to 5 U.S.C. 553(d), the AA finds good cause to waive the 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 21, 2021.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2021–11156 Filed 5–24–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210520–0113]

RIN 0648–BK42

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to remove limits on the maximum amount of halibut Individual Fishing Quota (IFQ) that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea) for the 2021 IFQ fishing year. This action is needed to provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut which are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws. **DATES:** Effective May 26, 2021, through December 31, 2021.

ADDRESSES: Electronic copies of the Categorical Exclusion, the Regulatory Impact Review (RIR) (herein referred to as the “Analysis”), and the Final Regulatory Flexibility Analysis (FFRA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT:

Abby Jahn, abby.jahn@noaa.gov, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

This final rule will implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in 2021. The existing vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)).

The following sections describe the IFQ Program, halibut IFQ vessel use caps, the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D, and the regulations that will be implemented under this final rule.

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3.1 of the Analysis. Because this rule is specific to the halibut IFQ fishery and not the sablefish component of the IFQ Program that is managed under the Magnuson Stevens Act's authorization, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding halibut quota share (QS). Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of the annual commercial catch limit in the halibut fishery. In addition, QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel (CV) or catcher/processor (CP)), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, Category A shares are designated for CPs that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas Category B, C, and D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

In the IFQ Program, NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified

amount of the IFQ species in an Area from a specific operation type and vessel category. IFQ is expressed in pounds (lb) and is based on the amount of QS held in relation to the total QS pool for each Area with an assigned catch.

The IFQ Program established: (1) Limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); (2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); (3) limits on the ability of IFQ assigned to one CV vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and (4) limits on the maximum amount of IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold CV QS and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the CV IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

On March 30, 2021, NMFS published an emergency rule to modify the temporary transfer provision of the IFQ Program for the commercial halibut and sablefish fisheries for the 2021 IFQ fishing year (86 FR 16542, March 30, 2021). That emergency rule allows QS holders to transfer IFQ to otherwise eligible recipients. This transfer flexibility promotes the complete and efficient harvest of the IFQ fisheries. Furthermore, that emergency rule temporarily alleviates impacts of unforeseen economic and social conditions in the IFQ fisheries. For example, QS holders will have more flexibility to select vessels to harvest their IFQ which may increase the number of vessels available to harvest (Section 2.6 of the Analysis). That emergency rule does not modify other provisions of the IFQ Program, including vessel use caps that may constrain fishing operations.

Halibut IFQ Vessel Use Caps

The IFQ Program established vessel use caps to limit the maximum amount of halibut that could be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps,

see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This final rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. This terminology used in this final rule is consistent with the IPHC, which recommends fishery catch limits (FCEY) and calculates halibut mortality in net pounds.

Relevant to this final rule, regulations at § 679.42(h)(1) state: “No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.” Applying this regulation to 2021 yields a vessel use cap of 92,848 lb (42.1 mt). This vessel use cap applies to vessels harvesting IFQ halibut in the areas subject to this final rule: Areas 4A, 4B, 4C, and 4D.

In addition, regulations at § 679.42(h)(1)(ii) state that “No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut derived from QS held by a CQE.” Compared to § 679.42(h)(1)’s vessel use cap, § 679.42(h)(1)(ii) imposes an even more restrictive vessel use cap on vessels that are harvesting IFQ halibut derived from QS held by a community quota entity (CQE). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Relevant to this final rule, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to this more restrictive 50,000 lb (22.7 mt) vessel use cap.

Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D

On February 10, 2021, at their regularly-scheduled meeting, the Council addressed requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut IFQ fisheries (Sections 1 and 2.3 of the Analysis). These requests were in part based on the success of the 2020 final rule that removed vessel use caps in

Area 4 that provided flexibility to the IFQ halibut fleet. In 2020, vessels harvested up to or over the vessel use cap in multiple Area 4 areas under the previous rule lifting these restrictions. Based on stakeholder engagement and considering a range of factors, the Council recommended, and now NMFS issues, this final rule. These factors include, but are not limited to:

- The unforeseen complications of health advisories and government-issued travel policies impose on fishing operations in the 2021 fishing year, particularly in the remote BSAI halibut IFQ fishery. These advisories and policies may restrict the ability for vessels and crew to operate and fully harvest their IFQ (Sections 2.3 and 2.5 of the Analysis);

- The relatively large proportion of vessels participating in the Area 4A, 4B, 4C, and 4D halibut IFQ fishery that are operating near current vessel use caps, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those Areas (Section 2.3 of the Analysis);

- The minimum number of vessels required to fully harvest the IFQ held by the affected CQE representing the community of Adak, Alaska, exceeds the number of vessels owned by residents of the community (Sections 2.3.1.6 and 2.3.1.7 of the Analysis);

- Reduced ex-vessel prices due to poor market conditions that may further limit the number of vessels that can economically harvest their halibut IFQ in Areas 4A, 4B, 4C, and 4D (Sections 2.3.1.2 and 2.3.1.8 of the Analysis); and

- Public health risks, combined with health measures at specific remote ports in Areas 4A, 4B, 4C, and/or 4D, which may further limit the ability of smaller vessels to operate because processing facilities and vessel services are not available. For example, in 2020, the local St. Paul fleet did not operate due to public health risks and adverse economic conditions (Section 2.3 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3 and 2.6, for additional detail on the efficacy of the 2020 final rule, the range of factors considered for this final rule, and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D for both CQE-associated vessels and non-CQE-associated vessels.

After considering these factors, the Council recommended “expedited action” to remove vessel use caps for the halibut IFQ fishery in Areas 4A, 4B, 4C, and 4D. NMFS accordingly established an expedited 15-day comment period for the proposed rule. Due to the widespread industry support

and the Council's request for expedited rulemaking and NMFS determination that this final rule should take effect before fishing vessels approach their use caps.

The Council did not recommend, and this final rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ Areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and in these other halibut Areas. Detailed information indicating that halibut harvests in these other IFQ Areas would not be constrained under the current vessel use caps is available in Section 2.3.1.4 of the Analysis.

The Council and NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4A, 4B, 4C, and 4D are relieved for the 2021 IFQ fishing year. The final regulatory amendments in this rule will temporarily add a regulation that would remove vessel use caps in Areas 4A, 4B, 4C, and 4D because the vessel use caps may restrict the harvest of halibut in these areas, and less restrictive management measures are needed as soon as practicable to ensure the more complete harvest of the halibut resource during the 2021 IFQ fishing year. This final rule is responsive to the uncommon circumstances in the fishery in 2021 and does not modify the vessel use cap provisions in future years, consistent with the Council's goals in implementing vessel use caps in this fishery (Section 2.3 in the Analysis). This final rule does not modify other elements of the IFQ Program. This final rule does not increase or otherwise modify the 2021 halibut catch limits adopted by the IPHC and implemented by NMFS (86 FR 13475, March 9, 2021). This final rule does not modify any other conservation measures recommended by the IPHC and adopted by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC. This final rule does not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Final Regulations

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of maintaining the vessel use cap limits described in this preamble, this final rule adds a new, temporary provision at 50 CFR 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year.

Because under existing regulations, vessel use caps are applied at the fishery level including harvest in all areas, the final regulations clarify that harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

Changes From Proposed to Final Rule

NMFS did not make changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

Comments and Responses

No comment letters were received during the comment period for the proposed rule (86 FR 19207, April 13, 2021).

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council with authority over a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. It is important that this final rule is implemented in a timely manner before fishing vessels approach their use caps. The IFQ halibut fishing season is already underway and began on March 7, 2021. A consequence of delayed effectiveness of this final rule is that a vessel's fishing activity may be limited unnecessarily if a vessel reaches their use cap prior to the effective date of this rule. Additionally, an expedited implementation provides much needed flexibility. Any delay in the effective date of this final rule would be contrary to public interest. Therefore, there is good cause to advance this thoroughly considered action.

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

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the

economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region's website at: <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program>.

Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (FRFA) incorporates the initial regulatory flexibility analysis (IRFA) and the analyses completed to support this action. No public comments were received for the proposed rule or in response to the IRFA. Section 604 of the Regulatory Flexibility Act (RFA) requires that when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency

has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (citation). That description is not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on April 13, 2021 (86 FR 19207). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on April 28, 2021. NMFS did not receive any comments. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

NMFS did not receive any comments on the proposed rule or specifically on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates the owners and operators of vessels that are used to harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. From 2014 through 2019, (the most recent year with complete data) 119 unique vessels harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but three of the vessels that landed halibut between 2014 and 2019 are considered small entities based on the \$11 million threshold.

Additional detail is included in Sections 2.8 in the Analysis prepared for this final rule (see **ADDRESSES**).

Impacts of this Action on Small Entities

This action would relieve a restriction which could facilitate harvesters to fully utilize IFQ allocations in Area 4 in the 2021 fishing season. Although it is difficult to predict the direct impact of the regulatory changes implemented for the 2020 IFQ seasons, harvest rates achieved in 2020 relative to all other

years (2006–2020) likely indicates the regulatory flexibilities implemented in 2020 (both the temporary transfer provisions as well the vessel use cap exemption) had some positive impact on the harvest rates, as described in Section 2.6 of the Analysis prepared for this action (see **ADDRESSES**).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the final rule that accomplish the stated objectives of the final action, consistent with applicable statutes, and that would minimize any significant economic impact of the final rule on small entities. The Council requested an action alternative and in considering the Council's request NMFS analyzed the impacts of the action alternative compared to the status quo.

The status quo alternative would retain the existing vessel use cap restrictions as defined under 50 CFR 679.42(h). Considering the existing social and economic conditions in the IFQ fishery since 2020, the supply of vessels available to prosecute Area 4 halibut IFQ fisheries could be limited such that a portion of the 2021 annual halibut allocation could be left unharvested if available vessels must comply with existing halibut IFQ vessel use limitations.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory areas 4A, 4B, 4C, and 4D. The action alternative and the regulations for this action would provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this final rule and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Collection-of-Information Requirements

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648–0272, Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota (IFQ).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 20, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year. Harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

* * * * *

[FR Doc. 2021–11087 Filed 5–25–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 86, No. 100

Wednesday, May 26, 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 ENERGY

10 CFR Parts 429 and 431

[EERE-2016-BT-STD-0004]

RIN 1904-AD61 and 1904-AD77

Energy Conservation Program: Test Procedure and Energy Conservation Standards for Circulator Pumps and Small Vertical In-Line Pumps

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

ACTION: Request for information; extension of public comment period.

SUMMARY: On May 7, 2021, the U.S. Department of Energy (“DOE”) published a request for information (“RFI”) restarting rulemaking activities to consider potential test procedures and energy conservation standards for circulator pumps and small vertical in-line pumps. The notification provided an opportunity for submitting written comments, data, and information by July 6, 2021. DOE received requests from Grundfos, the Hydraulic Institute (“HI”), and Taco, Inc. on May 7, 2021, May 10, 2021, and May 14, 2021, respectively, asking DOE to extend the public comment period until August 30, 2021. Additionally, DOE received a request from Xylem Inc. to extend the comment period until September 30, 2021. On May 14, 2021, HI sent a follow-up request providing more information on why an extension is necessary. DOE has reviewed these requests and is granting an extension of the public comment period to allow public comments to be submitted until July 30, 2021.

DATES: The comment period for the RFI published on May 7, 2021 (86 FR 24516) is extended. DOE will accept comments, data, and information regarding this RFI received no later than July 30, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments by email to the following address: Pumps2020TP0032@ee.doe.gov. Include “Circulator Pumps RFI” and docket number EERE-2016-BT-STD-0004 and/or RIN number 1904-AD61 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and the use of special characters or any form of encryption. No telefacsimilies (“faxes”) will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 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.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the 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.

The docket web page can be found at: www.regulations.gov/docket/EERE-2016-BT-STD-0004. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

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

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

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On May 7, 2021, DOE published an RFI seeking data and information regarding development and evaluation of new test procedures that would be reasonably designed to produce test results which reflect energy use during a representative average use cycle for the equipment without being unduly burdensome to conduct. Additionally, the RFI solicited information regarding the development and evaluation of potential new energy conservation standards for circulator pumps and small vertical in-line pumps, and whether such standards would result in significant energy savings and be technologically feasible and economically justified. 86 FR 24516, 24516. Interested parties in the matter, Grundfos (on May 7, 2021), HI (on May 10, 2021), Xylem Inc. (on May 11, 2021), and Taco, Inc. (on May 14, 2021), requested an extension of the public comment period for the RFI. (Grundfos, No. 105 at p. 1; HI, No. 106 at p. 1; Xylem Inc., No. 107, at p. 1; Taco, Inc., No. 108, at p. 1).¹ Grundfos, HI, Xylem Inc., and Taco, Inc. commented that the July 6, 2021 deadline is insufficient to collect the data and information requested because the pump industry is already tasked with responding to a separate RFI on Commercial and Industrial pumps in which comments are due on July 1, 2021. (Grundfos, No. 105 at p. 1; HI, No. 106 at p. 1; Xylem Inc., No. 107 at p. 1; Taco, Inc., No. 108 at p. 1) HI submitted a subsequent request on May 14, 2021 further

¹ The parenthetical reference provides a reference for information located in DOE’s rulemaking docket. (Docket No. EERE-2016-BT-STD-0004, which is maintained at www.regulations.gov/#/docketDetail;D=EERE-2016-BT-STD-0004). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

detailing the reasons that necessitate the extension request. (HI, No. 109, page 1.).

DOE has reviewed the requests and is extending the comment period to allow additional time for interested parties to submit comments. As noted, the RFI was issued as part of the preliminary stages of rulemaking to consider amendments to the test procedure and energy conservation standards for circulator pumps and vertical in-line pumps. If DOE determines that amended test procedures and/or energy conservation standards may be appropriate, additional notifications will be published (e.g., a notice of proposed rulemaking) providing interested parties with an additional opportunity to submit comment. As such, DOE has determined that an extension until the end of July is sufficient for this preliminary stage. Therefore, DOE is extending the comment period to July 30, 2021.

Signing Authority

This document of the Department of Energy was signed on May 18, 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 19, 2021.

Treana V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

[FR Doc. 2021-10883 Filed 5-25-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2021-OPE-0077]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committees.

SUMMARY: We announce our intention to establish negotiated rulemaking committees to prepare proposed regulations for programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The Department is committed to advancing equitable outcomes for all students and invites comments from organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations being considered by the particular committee. We also announce public hearings at which interested parties may comment on the topics for regulation suggested by the Department and suggest additional topics that should be considered for action by the negotiating committees. In addition, we announce that the Department will accept written comments on the topics suggested by the Department and suggestions for additional topics that should be considered for action by the negotiating committees.

DATES: The dates, times, and locations of the public hearings are listed under the **SUPPLEMENTARY INFORMATION** section of this document. We must receive written comments on the topics for regulation suggested by the Department and additional topics that should be considered for action by the negotiating committees on or before July 1, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C179, Washington, DC 20202.

Privacy Note: The Department’s policy is to make all comments received from members of the public (including those comments submitted by postal mail, commercial delivery, or hand delivery) available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to

include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at: www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html. For information about the public hearings, or for additional information about negotiated rulemaking, contact: Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C179, Washington, DC 20202. Telephone: (202) 453-6708. Email: vanessa.gomez@ed.gov.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committees from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select from the nominees individual negotiators who reflect the diversity among program participants.

We intend to convene multiple committees to develop proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans. Each committee will be comprised of a unique set of negotiators. The public will be made aware of the schedule and topics of each committee meeting in subsequent **Federal Register** notice(s).

Regulatory Issues

The Department suggests the following topics for regulation:

(1) Change of ownership and change in control of institutions of higher education under 34 CFR 600.31;

(2) Certification procedures for participation in title IV, HEA programs under 34 CFR 668.13;

(3) Standards of administrative capability under 34 CFR 668.16;

(4) Ability to benefit under 34 CFR 668.156;

(5) Borrower defense to repayment under 34 CFR 682.410, 682.411, 685.206, and 685.222;

(6) Discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402, and 685.213;

(7) Closed school discharges under 34 CFR 685.214 and 682.402;

(8) Discharges for false certification of student eligibility under 34 CFR 685.215(a)(1) and 682.402;

(9) Loan repayment plans under 34 CFR 682.209, 682.215, 685.208, and 685.209;

(10) The Public Service Loan Forgiveness program under 34 CFR 685.219;

(11) Mandatory pre-dispute arbitration and prohibition of class action lawsuits provisions in institutions' enrollment agreements (formerly under 34 CFR 685.300) and associated counseling about such arrangements under 34 CFR 685.304;

(12) Financial responsibility for participating institutions of higher education under 34 CFR subpart L, such as events that indicate heightened financial risk;

(13) Gainful employment (formerly located in 34 CFR subpart Q); and

(14) Pell Grant eligibility for prison education programs under 34 CFR part 690.

We also invite public input on how the Department could address, through its title IV regulations, gaps in postsecondary outcomes such as retention, completion, loan repayment, and student loan default by race, ethnicity, gender, and other key student characteristics.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) in the **Federal Register** announcing the specific topics for which we intend to establish negotiated rulemaking committees and a request for nominations for individual negotiators for the committees who represent the communities of interest that would be significantly affected by the proposed regulations. This document will also be posted on the Department's website at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Public Hearings

We will hold virtual public hearings for interested parties to comment on the

rulemaking agenda from 10:00 a.m. to 12:00 p.m. and 2:00 p.m. to 4:00 p.m., Eastern time on the following dates:

- June 21, 2021;
- June 23, 2021; and
- June 24, 2021.

Further information on the public hearings is available at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Individuals who would like to present comments at the public hearings must register by sending an email message to negreghearing@ed.gov no later than 12:00 p.m. Eastern time on the business day prior to the public hearing at which they want to speak. The message should include the name of the speaker, the email address of the speaker, the general topic(s) the individual would like to address, and one or more dates and times during which the individual would be available to speak. We will attempt to accommodate each speaker's preference for date and time; however, if we are unable to do so, we will make the determination on a first-come first-served basis, based on the time and date we received the message. We will limit each participant's comments to five minutes.

The Department will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a speaker. An individual may make only one presentation at the public hearings. If we receive more registrations than we can accommodate, the Department reserves the right to reject the registration of an entity or individual affiliated with an entity or individual that is already scheduled to present comments to ensure that a broad range of entities and individuals are able to present. Unique speaker access to the meetings will be through Microsoft Teams.

In part due to increased cybersecurity concerns, individuals who want to observe the public hearing, but who do not want present comments, are required to register. We will post registration links for attendees who wish to observe on our website at: www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html. There will be a unique link each day for attendees who wish to observe. Non-speaking attendees will join the public hearings through Microsoft Teams Live and will be muted with no option to unmute for the duration of each public hearing. The Department will also post transcripts of the hearings on that site.

The Department will accept written comments via the Federal eRulemaking portal, and by postal mail, commercial delivery, or hand delivery, through July 1, 2021. (See the **ADDRESSES** section of

this document for submission information.)

Schedule for Negotiations

We anticipate that any committees established after the public hearings will begin negotiations no earlier than August 2021, with the committees meeting for up to three sessions of approximately five days each at roughly four-week intervals. The committees will meet virtually. We may adjust the number of days of each session and time between sessions to adapt to the virtual environment. The dates and locations of these meetings will be published in a subsequent notice in the **Federal Register** and will be posted on the Department's website at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available for free on the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021-11120 Filed 5-25-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Part 1**

[Docket No. PTO-P-2020-0032]

RIN 0651-AD48

Electronic Submission of a Sequence Listing, a Large Table, or a Computer Program Listing Appendix in Patent Applications

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) proposes to amend the rules of practice to permit higher-capacity physical media to be submitted to the USPTO. Patent applications for certain inventions require significant data in American Standard Code for Information Interchange (ASCII) text format to be submitted to the USPTO in order to determine whether the invention described in the patent application is patentable. When submission of such data exceeds the USPTO's patent electronic filing system capacity, direct submission would not be possible for a large data submission in ASCII text format. To that end, the rules of practice are proposed to be amended to provide applicants with the ability to use physical media larger than compact discs (CDs) for submission of an electronic version of amino acid and nucleotide sequence information, information compiled in a large table, and information relating to a computer program listing. Additionally, changes regarding extraction of compressed data files, which had not been permitted in the past for certain submissions, would be permitted if compliant with the requirements of the proposed rules. Other rules relating to certain obsolete and non-secure methods of presenting data would be eliminated.

DATES: Comments must be received by July 26, 2021 to ensure consideration.

ADDRESSES: For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via www.regulations.gov, enter docket number PTO-P-2020-0032 on the homepage and click "Search." The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the "Comment Now!" icon, complete the required fields, and enter or attach your

comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal website (www.regulations.gov) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, by email at Mary.Till@uspto.gov; or Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, by email at Ali.Salimi@uspto.gov. Contact via telephone at 571-272-7704 if further instruction is needed for the submission of comments.

SUPPLEMENTARY INFORMATION:

Background: In order to permit the submission of large amounts of data in patent applications where such a submission exceeds the capacity for filing via the USPTO patent electronic filing systems, this rulemaking seeks to expand the types of physical media that can be used for such a submission. The volume of applications in which such large amounts of data may need to be submitted is a small fraction of the total number of applications that the USPTO receives every year. Expanding the types of physical media that can be used by these applicants achieves the intent with minimal changes to the USPTO's processing of such large amounts of data.

With respect to the submission of data relating to biotechnology inventions, the proposed rules would no longer permit an applicant to rely on a previously submitted computer readable form (CRF) of required sequence information. The proposed rules thus ensure the robustness of the data by requiring the applicant to confirm that the data presented is the correct information for the examiner to consider during the examination process. Since the proposed rules will also permit an ASCII plain text file to serve as both the sequence listing itself and the CRF of the sequence listing, these changes are

expected to have a minimal impact on applicants in general.

The USPTO encourages applicants to file their patent applications via its USPTO patent electronic filing system and imposes a surcharge for non-electronic filing of an original patent application (excluding reissue, design, plant, and provisional applications), as mandated by section 10(h) of Public Law 112-29, September 16, 2011 (Leahy-Smith America Invents Act). The USPTO provides information (Legal Framework for Patent Electronic System) concerning electronic filing via the USPTO patent electronic filing system on its website at www.uspto.gov/patents-application-process/filing-online/legal-framework-efs-web and in section 502.05 of the Manual of Patent Examining Procedure (MPEP, Ninth Edition, Revision 10.2019). In particular, the USPTO patent electronic filing system permits submission of ASCII plain text files (.txt) for submission of a "Sequence Listing," a CRF of a "Sequence Listing," "Large Tables," and a "Computer Program Listing Appendix." Although a USPTO patent electronic filing system submission of such ASCII plain text files is preferred, it is possible that the system limitations of the USPTO patent electronic filing system may not accommodate large ASCII text files. Currently, in those circumstances, such text files may be submitted on compact disc under 37 CFR 1.52(e), and images of such text files may be submitted in Portable Document Format (PDF) via the USPTO patent electronic filing system (except for a CRF of a "Sequence Listing" or a "Computer Program Listing Appendix" having over 300 lines—these must be submitted on compact disc under 37 CFR 1.52(e)). The proposed changes to the rules of practice pertaining to a "Sequence Listing," a CRF of a "Sequence Listing," "Large Tables," and a "Computer Program Listing Appendix" would harmonize the rules for filing such documents in electronic form with the requirements and conditions set forth in the Legal Framework for Patent Electronic System. The proposed changes do not alter the requirements and conditions set forth in the Legal Framework for Patent Electronic System.

Submission of ASCII plain text files: Currently, electronic documents in ASCII file format that are to become part of the permanent USPTO records in the file of a patent application, reexamination, or supplemental examination proceeding that exceed the USPTO patent electronic filing system limits may be submitted on a compact disc. Due to the limited storage capacity

of compact discs, the USPTO is proposing revisions to permit use of Digital Video Disc-Recordable (DVD-R or DVD+R). These higher-capacity read-only optical discs, on which data is permanently recorded and cannot be changed or erased, significantly reduce the number of physical media required to accommodate large files.

In the case of a "Sequence Listing," MPEP section 2422.03 indicates that if a new application is filed via the USPTO patent electronic filing system with an ASCII plain text file of a "Sequence Listing" that complies with the requirements of 37 CFR 1.824(a)(2) through (6) and (b), and the applicant has not filed a "Sequence Listing" in a PDF image file, the text file will serve as both the paper copy required by 37 CFR 1.821(c) and the CRF required by 37 CFR 1.821(e). This concept is expressly incorporated into these proposed changes to the rules of practice. The current size limitation for an ASCII plain text file of a "Sequence Listing" submitted via the USPTO patent electronic filing system is 100 megabytes (MB). Thus, if an applicant files an ASCII plain text file of a "Sequence Listing" that is 100 MB or less, that ASCII plain text file serves as both the "Sequence Listing" under 37 CFR 1.821(c) and the CRF of the "Sequence Listing" under 37 CFR 1.821(e). With respect to "Large Tables" and a "Computer Program Listing Appendix," if ASCII plain text files are filed through the USPTO patent electronic filing system, then no separate submission of disc copies of ASCII plain text files are needed. However, the current system limit of ASCII plain text file submissions of "Large Tables" and a "Computer Program Listing Appendix" is 25 MB per submission. This limit, however, may not prevent an entirely electronic submission. According to the Legal Framework for Patent Electronic System, cited *supra*, a user may be able to break up a "Computer Program Listing Appendix" or "Large Tables" file that is larger than 25 MB into multiple files that are no larger than 25 MB each and submit those smaller files via the USPTO patent electronic filing system. If the user chooses to break up a large "Computer Program Listing Appendix" or "Large Tables" file so it may be submitted electronically, the file names must indicate their order (e.g., "1 of X," "2 of X"). Files above the 25 MB limit for "Large Tables" and a

"Computer Program Listing Appendix" (unless capable of being divided) and above 100 MB for a "Sequence Listing" will have to be submitted on read-only optical discs. Submission of a "Sequence Listing" as an ASCII text file, if it exceeds 100 MB, cannot be divided like a submission of a "Large Table" or a "Computer Program Listing Appendix." Thus, any "Sequence Listing" greater than 100 MB must be submitted on read-only optical discs. Currently, such files cannot be compressed; this can necessitate the use of multiple CD-ROMs or CD-Rs. These proposed changes to the rules of practice will permit higher-capacity media as well as non-self-extracting file compression. By permitting file compression, material submitted on a read-only optical disc will be capable of fitting on a single disc with the data integrity remaining intact.

The current rules of practice (37 CFR 1.52(e), 1.96(c), and 1.824) recite the use of certain obsolete computer and operating system formats. Updated computer and operating system formats are proposed to be added, and reference to obsolete media will be eliminated. Proposed changes to 37 CFR 1.58 will recite the updated computer and operating system compatibilities.

When a patent application relies on subject matter from an ASCII plain text file submitted on physical media or via the USPTO patent electronic filing system, currently, the patent specification must contain an incorporation by reference statement pursuant to 37 CFR 1.77(b)(5) or the Legal Framework for Patent Electronic System. The rules relating to the arrangement of the specification are proposed to be amended to clarify the required incorporation by reference statement. The granted patent or pre-grant publication of an application that includes an ASCII plain text file, whether submitted on optical read-only discs or via the USPTO patent electronic filing system, does not include the actual contents of the ASCII plain text file in the printed document. The incorporation by reference is necessary to treat the material in the ASCII file as part of the patent or publication and to alert the public that the granted patent or the pre-grant publication includes additional material that constitutes part of the patent or publication. Although the current rules and proposed changes to the rules of practice permit a cross-reference to related applications to be

included in the specification, in accordance with 37 CFR 1.76, it should be noted that the USPTO does not recognize a benefit or priority claim presented only in the specification for patent applications filed on or after September 16, 2012. For these applications or patents issued from such applications, a benefit claim (37 CFR 1.78) or priority claim (37 CFR 1.55) must be presented on an Application Data Sheet for an original application in order to be recognized by the USPTO.

Sequence Listings: Any patent application that contains unbranched nucleotide sequences with 10 or more nucleotide bases or unbranched, non-D amino acid sequences with 4 or more amino acids, provided that there are at least 10 "specifically defined" nucleotides or 4 "specifically defined" amino acids, must contain a "Sequence Listing" and a CRF of the "Sequence Listing." Under the current rules, a "Sequence Listing" exceeding the USPTO patent electronic filing system submission limit must be submitted with a total of three disc copies to the USPTO to comply with the "Sequence Listing" regulation requirements. The three disc copies are (1) a first disc copy of ASCII plain text file on a compact disc to comply with 37 CFR 1.821(c), (2) a second identical disc copy of the ASCII plain text file on compact disc to comply with the duplicate submission requirement in 37 CFR 1.52(e)(4) when submitting the 37 CFR 1.821(c) sequence listing, and (3) a CRF copy of the ASCII plain text file on compact disc, identical to the 37 CFR 1.821(c) submission. The proposed rule changes would permit that a single read-only optical disc copy of a "Sequence Listing" as an ASCII plain text file could be submitted, and that such submission would comply with both the listing requirement (37 CFR 1.821(c)) and the CRF requirement (37 CFR 1.821(e)). For submission via the USPTO patent electronic filing system, the ASCII plain text file, not the PDF version, would serve to comply with both 37 CFR 1.821(c) and 1.821(e). The following table summarizes the mechanics of submitting a "Sequence Listing" under the proposed changes to the rules of practice in applications, except for international applications during the international stage, based on the current USPTO patent electronic filing system limit of 100 MB for an ASCII plain text file and a system limit of 25 MB for PDF files.

Size of "Sequence Listing"	Preferred submission	Acceptable submission	Specification statement requirements	Surcharge under 37 CFR 1.21(o) for submission of a "Sequence Listing" in electronic form
100 MB or less.	ASCII plain text file submitted via the USPTO patent electronic filing system, complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed.	The "Sequence Listing" in physical paper copies or submitted via the USPTO patent electronic filing system as a PDF image file and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper/PDF image file submission are the same.	Incorporation by reference of the ASCII text file into the specification (see MPEP 502.05).	None.
101 MB to 299 MB.	ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed.	The "Sequence Listing" in physical paper copies and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper submission are the same.	Incorporation by reference of the ASCII text file into the specification (37 CFR 1.52(e)(8)).	None.
300 MB to 799 MB.	ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed.	The "Sequence Listing" in physical paper copies and a CRF on a read-only optical disc along with statement that the CRF and the physical paper submission are the same.	Incorporation by reference of the ASCII text file into the specification (37 CFR 1.52(e)(8)).	37 CFR 1.21(o)(1): Currently \$1,000 for an undiscounted entity, \$500 for a small entity, and \$250 for a micro entity.
800 MB or above.	ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed. Should more than one disc be needed, then only a single copy of the additional disc(s) would be needed, no additional CRF needed since the read-only optical discs (if multiple are needed) need NOT be submitted in duplicate.	The "Sequence Listing" in physical paper copies and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper submission are the same.	Incorporation by reference of the ASCII text file into the specification (37 CFR 1.52(e)(8) as added in these proposed rules).	37 CFR 1.21(o)(2): Currently \$10,000 for an undiscounted entity, \$5,000 for a small entity, and \$2,500 for a micro entity.

The current rules of practice relating to form, content, and submission requirements of "Sequence Listings" comply with World Intellectual Property Organization (WIPO) Standard ST.25. In this document, the proposed rule changes and modifications also conform to WIPO Standard ST.25.

To simplify and streamline the processing of patent applications with sequences of amino acids and nucleotides as defined in 37 CFR 1.821(a), submission of a "Sequence Listing" in ASCII plain text file format, either directly via the USPTO patent electronic filing system or on a read-only optical disc, will be sufficient to comply with the listing requirement and the CRF requirement (37 CFR 1.821(c) and 1.821(e)). That is, if a "Sequence Listing" in ASCII plain text file format is filed either directly via the USPTO patent electronic filing system or on a read-only optical disc, then no additional CRF copy will be needed. In such a situation, an incorporation by reference statement in the specification, in accordance with 37 CFR 1.77(b)(5), would still be required, except such a statement will not be required in an international application during the

international stage. As with the current rules, the proposed changes continue to permit submission of a "Sequence Listing" on physical sheets of paper or as a PDF image file. Furthermore, like the current rules, the proposed rules will require payment of the application size fee (37 CFR 1.16(s)) for physical sheets of paper of a "Sequence Listing" or a PDF of a "Sequence Listing" that results in an application size that exceeds 100 sheets of paper. Submission of the "Sequence Listing" as a PDF or on physical sheets of paper would still require a separate CRF of the "Sequence Listing." Similarly, should the ASCII plain text file of the "Sequence Listing" exceed the system limits of the USPTO patent electronic filing system (currently at 100 MB), then a single copy of an ASCII plain text file of the "Sequence Listing" submitted on a read-only optical disc would not require a separate electronic copy of a CRF of the "Sequence Listing." In circumstances in which a separate CRF is filed, the statement, in accordance with 37 CFR 1.821(e)(2)(iii), that the CRF is identical to either the PDF or the physical paper version of the "Sequence Listing" is required.

The proposed rule changes will no longer permit the transfer of a CRF from a parent or related application to the newly filed original application. In light of the availability to download a "Sequence Listing" from granted U.S. patents and U.S. patent application publications via Public PAIR in the Supplemental Content tab, there is no longer a need for a CRF transfer. Such electronic copies of a "Sequence Listing" may also be available on another intellectual property office's website or on the WIPO—PATENTSCOPE website. In the extremely rare circumstance in which the "Sequence Listing" exceeds the download capability (currently 650 MB), then a request for the content of a granted U.S. patent or U.S. patent application publication (including the "Sequence Listing" submitted on disc) can be made to the Patent and Trademark Copy Fulfillment Branch. Therefore, these proposed changes to the rules of practice will eliminate the practice of CRF transfers.

WIPO Standard ST.26 is expected to take effect on January 1, 2022, and will replace WIPO Standard ST.25. WIPO Standard ST.26 will require that a

“Sequence Listing” must be presented as a single file in eXtensible Markup Language (XML). As a result, in an original application filed on or after January 1, 2022, the “Sequence Listing” part will not be accepted on physical sheets of paper or as a PDF image file. Therefore, to prepare for the changes under WIPO Standard ST.26, the USPTO is proposing to revise the rules of practice to facilitate “Sequence Listing” submissions by requiring a single ASCII plain text file submission that would both meet the “Sequence Listing” requirement and serve as the CRF of the “Sequence Listing.” That is, under these proposed rule changes, a single ASCII plain text file submission of a “Sequence Listing” would comply with both 37 CFR 1.821(c) and (e).

Currently, 37 CFR 1.821(a) incorporates by reference six tables from Appendix 2 of WIPO Standard ST.25 that provide the nucleotide and amino acid symbols and feature tables. For convenience, a further proposed modification of the “Sequence Listing” rules involves adding these tables as Appendices A–F of Subpart G of Part 1 (explicitly incorporating the text of the WIPO tables into the CFR). Currently, 37 CFR 1.823(b) includes a table containing all numeric identifiers. To improve the readability of the regulations, this table is proposed to be moved to Appendix G.

Updates to amendment practice for “Large Tables,” a “Computer Program Listing Appendix,” and “Sequence Listings”: In general, the manner of making amendments in applications requires that the text of any added subject matter must be shown by underlining the added text and that the text of any deleted matter must be shown by strike-through. However, computer listings (37 CFR 1.96) and “Sequence Listings” (37 CFR 1.825) are currently exempted from these general requirements (37 CFR 1.121(b)). These proposed changes to the rules of practice will require a description of the amendments made in “Large Tables,” a “Computer Program Listing Appendix,” and “Sequence Listings” to more easily and accurately identify any changes made to the information contained in such submissions (37 CFR 1.121(b)(6)).

This proposed rule includes requirements for amendments to an ASCII plain text file containing “Large Tables” (37 CFR 1.58(g)) or a “Computer Program Listing Appendix” (37 CFR 1.96(c)(5)(i)) that are accomplished by a replacement of an ASCII plain text file. Providing a replacement may be required if, for example, the information on the disc is corrupted. A replacement ASCII plain text file must be submitted, either via the USPTO patent electronic

filing system or on a read-only optical disc, together with an incorporation by reference of the material in the replacement ASCII plain text file in a separate paragraph of the specification; a statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and a statement that the replacement ASCII plain text file contains no new matter.

Discussion of Specific Rules

Section 1.52: The heading of § 1.52 is proposed to read: Language, paper, writing, margins, read-only optical disc specifications.

Section 1.52(e) is proposed to be amended to reference electronic documents “submitted on a read-only optical disc,” with additional conforming changes made throughout. Currently, § 1.52(e) references “electronic documents” that are to become part of the USPTO records in patent applications, reexaminations, and supplemental examination proceedings. Since § 1.52(e) only governs electronic documents submitted on discs, in particular as proposed, read-only optical discs, the heading is more specific to the types of electronic documents covered by the regulation.

Section 1.52(e)(1) is proposed to be updated to specifically refer to a “Computer Program Listing Appendix,” as provided for in § 1.96(c), and to require that the “Sequence Listing” on a read-only optical disc submitted under § 1.821(c) must be in compliance with § 1.824. Section 1.52(e)(1) is proposed to be revised to indicate that “Large Tables,” as described in the proposed changes to § 1.58(c), may be submitted on a read-only optical disc to become part of the permanent USPTO record.

Section 1.52(e)(2) is proposed to be revised to replace “compact” with “read-only optical” and to incorporate conformity to the International Organization for Standardization (ISO) 9660 standard, which was previously located in § 1.52(e)(3). Additionally, § 1.52(e)(2) maintains the availability of CD-ROM and CD-R as options for physical media (§ 1.52(e)(2)(i)) but also expands the types of media options to include Digital Video Disc-Recordable (DVD-R or DVD+R) (§ 1.52(e)(2)(ii)).

Section 1.52(e)(3) is proposed to be reorganized for improved readability. The computer compatibility (§ 1.52(e)(3)(i)) and operating system compatibility (§ 1.52(e)(3)(ii)) are expressly provided. Furthermore, the proposed changes to the rules of practice indicate the use of ASCII plain text is required when submitting files on physical media (§ 1.52(e)(3)(iii)). The

proposed changes would permit file compression for ASCII plain text files, which must be done in accordance with §§ 1.58, 1.96, and 1.824, as applicable (§ 1.52(e)(3)(iii)).

Section 1.52(e)(4) is proposed to be revised to eliminate its requirements for a duplicate copy and accompanying statement that the two discs are identical. References to “Copy 1” and “Copy 2” are deleted, and references to “compact disc” are updated to “read-only optical disc.” However, duplicate copies of read-only optical discs for “Large Tables” or a “Computer Program Listing Appendix” will still be required, and §§ 1.58 and 1.96 are proposed to be amended to provide for such duplicate copies. Duplicate copies for “Large Tables” and a “Computer Program Listing Appendix” would still be required to be submitted since the Office of Patent Application Processing (OPAP) keeps a first copy for record retention purposes and a second copy in an artifact folder for use by the examiner during the patent examination process. A “Sequence Listing,” however, is not processed in the same manner. Accordingly, only a single copy of a read-only optical disc containing the “Sequence Listing” in ASCII plain text is needed, as such copy will serve as both the listing as required by 37 CFR 1.821(c) and the CRF copy as required by 37 CFR 1.821(e). Section 1.52(e)(4) is also proposed to require that the read-only optical discs are enclosed in a hard case within an unsealed, padded, and protective mailing envelope and that such submission is accompanied by a transmittal letter. The information regarding the read-only optical disc to be included in the transmittal letter is expressly enumerated in items (i)–(vi) of this rule.

Section 1.52(e)(5) is proposed to be revised to enumerate the labeling requirements of the read-only optical disc that had previously been enumerated in § 1.52(e)(6). The incorporation by reference found in the current § 1.52(e)(5) is deleted and moved to § 1.52(e)(8).

Section 1.52(e)(6) is proposed to be revised to state that the read-only optical discs may not be retained as part of the patent application file and will not be returned to the applicant. The current USPTO processing of compact discs would equally apply to read-only optical discs. For “Large Tables” or a “Computer Program Listing Appendix,” the process involves the OPAP receiving the read-only optical discs, creating an artifact sheet for inclusion in the Image File Wrapper, and reviewing the ASCII plain text file. Under the current rules, a first copy of the read-only optical disc

is kept for record retention purposes, and a second copy is maintained in an artifact folder for use by the examiner during the patent examination process. For a “Sequence Listing,” the proposal would require the submission of a single read-only optical disc. Once the “Sequence Listing” is loaded into the USPTO’s Supplemental Complex Repository for Examiners (SCORE) system, the physical media may be retained by the Patent Legal Research Center. A “Sequence Listing” from granted U.S. patents and U.S. patent application publications is available via Public PAIR in the Supplemental Content tab. Such electronic copies of a “Sequence Listing” may also be available on another intellectual property office’s website, or on the WIPO—PATENTSCOPE website. In the extremely rare circumstance in which the “Sequence Listing” exceeds the download capability (currently 650 MB), then a request for the content of a granted U.S. Patent or U.S. patent application publication (including the “Sequence Listing” submitted on disc) can be made to the Patent and Trademark Copy Fulfillment Branch.

Section 1.52(e)(7) is proposed to be revised to state that any amendment to the information on a read-only optical disc must be made in accordance with specified provisions, specifically, in compliance with § 1.58(g) for “Large Tables,” § 1.96(c)(5) for a “Computer Program Listing Appendix,” and § 1.825(b) for a “Sequence Listing” or a CRF of a “Sequence Listing.”

Section 1.52(e)(8) is proposed to be added to state that the specification must contain an incorporation by reference (§ 1.77(b)(5)) of the material contained on each read-only optical disc in a separate paragraph, except for an international application in the international stage. Additionally, the USPTO may require the applicant to amend the specification to include the material incorporated by reference.

Section 1.52(e)(9) is proposed to be added to indicate that should a file be unreadable, then the USPTO will treat the submission as not ever having been submitted. A file is unreadable if, for example, it is of a format that does not comply with the requirements of § 1.52(e)(2), it is corrupted, or it is written onto a defective read-only optical disc. In such a case, OPAP will issue a notice indicating that the file is unreadable, and a replacement will be required.

Section 1.52(f) is proposed to be amended to include the subtitle “Determining application size fees for applications containing electronic documents submitted on a read-only

optical disc or via the USPTO patent electronic filing system.”

Section 1.52(f)(1) is proposed to be amended to clarify the determination of application size fees for application components submitted on a read-only optical disc in compliance with § 1.52(e), where an electronic form of any “Sequence Listing,” in compliance with either § 1.821(c) or (e), and any “Computer Program Listing Appendix,” in compliance with § 1.96(c), are specifically excluded from the application size fee determination. As stated in 35 U.S.C. 41(a)(1)(G), “any sequence listing” or a “computer program listing” submitted in electronic form is expressly excluded from any application size fee calculation. A “Computer Program Listing Appendix” is considered a “computer program listing.”

Section 1.52(f)(2) is proposed to be amended to clarify the determination of application size fees for applications submitted in whole or in part via the USPTO patent electronic filing system and also to clarify that any electronic form of a “Sequence Listing,” in compliance with either § 1.821(c) or (e), and any “Computer Program Listing Appendix,” in compliance with § 1.96(c), are specifically excluded from the application size fee determination. As stated in 35 U.S.C. 41(a)(1)(G), “any sequence listing” or a “computer program listing” submitted in electronic form is expressly excluded from any application size fee calculation. A “Computer Program Listing Appendix” is considered a “computer program listing.”

Section 1.52(f)(3) is proposed to be added to provide a surcharge for submission of a “Sequence Listing” in electronic form in an application under 35 U.S.C. 111 or 371 that is 300 MB or larger in size. The lengthy “Sequence Listing” surcharge is set forth in § 1.21(o). This means that a “Sequence Listing” submitted in electronic form on read-only optical discs in compliance with either §§ 1.821(c) either/or 1.821(e) that is 300 MB or larger in size will incur a surcharge under § 1.21(o). When the electronic form of the “Sequence Listing” is between 300 MB and 800 MB, a surcharge under § 1.21(o)(1) will be required. If the electronic form of the “Sequence Listing” exceeds 800 MB, then a surcharge under § 1.21(o)(2) will be imposed.

Section 1.58: Section 1.58(b) is proposed to delete references to §§ 1.96(c) and 1.821(c) regarding tables submitted in electronic form and to set forth format requirements, from former § 1.58(c), that apply generally to

chemical and mathematical formulas and tables.

Section 1.58(c) is proposed to be rewritten to define “Large Tables” that may be submitted in electronic form in ASCII plain text via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), excluding an international application during the international stage. Additionally, the current USPTO processing of “Large Tables” submitted on a read-only optical disc involves a first copy, for record retention purposes, and a second copy, for use during the examination process.

Section 1.58(d) is proposed to be added to list the format requirements of “Large Tables” submitted in electronic form in ASCII plain text. The format requirements address the spatial relationship of table elements, computer compatibility, operating system compatibility, the use of ASCII plain text, the naming conventions for the .txt file, and an incorporation by reference statement to be included in the specification, as per § 1.77(b)(5).

Section 1.58(e) is proposed to be added to state that “Large Tables” submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted. It is noted that when submitting via the USPTO patent electronic filing system, it is possible to submit multiple files that are 25 MB or less in size, as per the Legal Framework for Patent Electronic System cited *supra*.

Section 1.58(f) is proposed to be added to specify the technical requirements for “Large Tables” submitted on read-only optical discs in compliance with § 1.52(e) and that compression is permitted. Section 1.58(f) also specifies the permitted manner of file compression.

Section 1.58(g) is proposed to be added to provide the procedure that would be applicable should an amendment of one or more “Large Tables” be required. If an amendment is required to be made to a “Large Table,” then a replacement submission via the USPTO patent electronic filing system or on duplicate read-only optical discs would be necessary. An updated incorporation by reference statement would be required along with the necessary statement regarding any deletions, replacements or addition to the ASCII plain text file and a statement that the replacement ASCII plain text file contains no new matter.

Section 1.58(h) is proposed to be added to specify that should “Large Tables” be submitted as an ASCII plain text file on the application filing date,

but no incorporation by reference of the material contained therein has been made, an amendment containing a separate paragraph incorporating by reference the material contained in the ASCII plain text file, as per § 1.77(b)(5), will be required.

Section 1.58(i) is proposed to be added to require that any read-only optical disc for a “Large Table” be submitted in duplicate. Section 1.58(i) sets forth the criteria for labeling and necessary statements as to the identity of the read-only optical discs. This section indicates how the USPTO will treat the submission of the two read-only optical discs that are not identical to each other. Duplicate copies for “Large Tables” are required to be submitted since the OPAP keeps a first copy for record retention purposes and a second copy in an artifact folder for use by the examiner during the patent examination process.

Section 1.58(j) is proposed to be added to require that any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.58(g), where the replacement read-only optical disc and copy must be labeled “COPY 1 REPLACEMENT MM/DD/YYYY” (with the month, day, and year of creation indicated) and “COPY 2 REPLACEMENT MM/DD/YYYY,” respectively. This section indicates how the USPTO will treat the submission of the two replacement read-only optical discs that are not identical to each other.

Section 1.71: Section 1.71(f) is proposed to be revised to clarify that a “Sequence Listing,” if required or submitted under § 1.821(c), should be submitted on a separate sheet. This is directed to those submissions of the “Sequence Listing” submitted on physical sheets of paper or submitted as a PDF image file via the USPTO patent electronic filing system. In such cases where there is a separate “Sequence Listing” and a separate CRF of the “Sequence Listing,” the “Sequence Listing” must be on a separate sheet(s).

Section 1.77: Section 1.77(b)(5) is proposed to be revised to clarify when an incorporation by reference is needed. The proposed rule change provides for incorporation by reference of ASCII plain text files submitted via the USPTO patent electronic filing system or on one or more read-only optical discs for a “Computer Program Listing Appendix,” a “Sequence Listing,” or “Large Tables,” as provided for in §§ 1.96(c), 1.821(c), or 1.58(c), respectively. The proposed incorporation by reference statement would identify the names of each ASCII plain text file and specify, if applicable, the files contained on each of the read-

only optical discs, their dates of creation, and the sizes of each ASCII plain text file in bytes.

Section 1.77(b)(13) is proposed to be revised to clarify that the “Sequence Listing” required by § 1.821(c), submitted on physical sheets of paper or as a PDF image file of the “Sequence Listing,” should follow the other sections of the specification.

Section 1.96: Section 1.96(a) is proposed to be revised to replace “printout” with “document.”

Section 1.96(c) is proposed to be revised to set forth the requirements that apply to any “Computer Program Listing Appendix” that will not be part of the printed patent specification. The appendix must be submitted as an electronic document in ASCII plain text, whether submitted via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e). Proposed requirements for the “Computer Program Listing Appendix” include that it must be incorporated by reference in the specification, as set forth in § 1.77(b)(5), and have certain computer compatibilities (§ 1.96(c)(1)), naming convention adherences (§ 1.96(c)(2)), and size limitations (§ 1.96(c)(3)).

Section 1.96(c)(4) is proposed to be added to state requirements (i) through (vi) where the “Computer Program Listing Appendix” is submitted on a read-only optical disc, in compliance with § 1.52(e).

Section 1.96(c)(5) is proposed to be added to state requirements (i) through (iv) for amendments to delete, replace, or add to the information of a “Computer Program Listing Appendix” submitted in electronic form in ASCII plain text.

Section 1.96(c)(6) is proposed to be added to indicate that should a “Computer Program Listing Appendix” be present on the filing date of the application without an express incorporation by reference in the specification relating to the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5), then an amendment to include such a paragraph in the specification will be required.

Section 1.96(c)(7) is proposed to be added to indicate that a submission of a “Computer Program Listing Appendix” on a read-only optical disc must be completed in duplicate, since the processing by the USPTO of a “Computer Program Listing Appendix” submitted on a read-only optical disc involves keeping a first copy for record retention purposes and using a second copy during the examination process. The new section sets forth the criteria for labeling and necessary statements as

to the identity of the read-only optical discs. This proposed section indicates how the USPTO will treat the submission of the two read-only optical discs should they not be identical.

Section 1.121: Section 1.121(b) is proposed to be revised, and § 1.121(b)(6) is proposed to be added, to clarify that “Large Tables” in accordance with § 1.58(c), a “Computer Program Listing Appendix” in accordance with § 1.96(c)(5) and (7), and a “Sequence Listing” or CRF in accordance with § 1.825 must be amended in accordance with § 1.58(g), § 1.96(c)(5), and § 1.825, respectively.

Section 1.173: The heading of § 1.173(b)(1) is proposed to be revised to reflect that, in a reissue application, changes to the claims, “Large Tables” (§ 1.58(c)), a “Computer Program Listing Appendix” (§ 1.96(c)), or a “Sequence Listing” (§ 1.821(c)) are made in a different manner from changes to other parts of the specification.

The manner of making changes to the specification, other than to the claims, set forth in current § 1.173(b)(1) is proposed to be moved to new § 1.173(b)(1)(i). New § 1.173(b)(1)(i) specifies that it does not apply to changes to “Large Tables” (§ 1.58(c)), a “Computer Program Listing Appendix” (§ 1.96(c)), or a “Sequence Listing” (§ 1.821(c)), in addition to not applying to changes to the claims. Additionally, the language from current § 1.173(b)(1) stating that the paragraph is not applicable to discs is proposed to not be included in new § 1.173(b)(1)(i).

Section § 1.173(b)(1)(ii) is proposed to be added to specify that changes to “Large Tables,” a “Computer Program Listing Appendix,” or a “Sequence Listing” must be made in accordance with § 1.58(g) for “Large Tables,” § 1.96(c)(5) for a “Computer Program Listing Appendix,” and § 1.825 for a “Sequence Listing.”

Section 1.173(d) is proposed to be revised to exclude changes to “Large Tables,” a “Computer Program Listing Appendix,” or a “Sequence Listing” from the changes that must be shown by markings in a reissue application.

Section § 1.173(d)(2) is proposed to be revised to delete the following: “except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with ‘<U>’ and end with ‘</U>’ to properly identify the material being added.”

Section 1.530: The heading of § 1.530(d)(1) is proposed to be revised to reflect that, in a reexamination proceeding, changes to the claims, “Large Tables” (§ 1.58(c)), a “Computer Program Listing Appendix” (§ 1.96(c)),

and a “Sequence Listing” (§ 1.821(c)) are made in a different manner from changes to the other parts of the specification.

The manner of making changes to the specification, other than to the claims, set forth in current § 1.530(d)(1) is proposed to be moved to new § 1.530(d)(1)(i). New § 1.530(d)(1)(i) specifies that it does not apply to changes to “Large Tables” (§ 1.58(c)), a “Computer Program Listing Appendix” (§ 1.96(c)), and a “Sequence Listing” (§ 1.821(c)), in addition to not applying to changes to the claims.

Section 1.530(d)(1)(ii) is proposed to be added to specify that changes to “Large Tables,” a “Computer Program Listing Appendix,” or a “Sequence Listing” must be made in accordance with § 1.58(g) for “Large Tables,” § 1.96(c)(5) for a “Computer Program Listing Appendix,” and § 1.825 for a “Sequence Listing.”

Section 1.821: Section 1.821(a) is proposed to be revised to remove all prior references to WIPO Standard ST.25 (1998) and instead cross-reference new Appendices A through F to part 1 of 37 CFR, subpart G, which would contain the updated 2009 version of the tables from WIPO Standard ST.25.

Section 1.821(c) is proposed to be revised to delete references to a paper or compact disc copy (§ 1.52(e)), delete discussion of sequence identifiers, and indicate that the criteria for submission of a “Sequence Listing,” except for national stage entry under § 1.495(b)(1), is set forth in newly proposed § 1.821(c)(1)–(3). Information about sequence identifiers has been moved to § 1.823(a).

Section 1.821(c)(1) is proposed to be added to require that the “Sequence Listing” can be submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc copy, where the form and format of the “Sequence Listing” conforms to § 1.824 and an incorporation by reference statement as required by § 1.52(e) is provided. Section 1.821(c)(2) is proposed to be added to permit submission of a “Sequence Listing” as a PDF file via the USPTO patent electronic filing system. Section 1.821(c)(3) is proposed to be added to permit the submission of a “Sequence Listing” on physical sheets of paper.

Section 1.821(d) is proposed to be revised to add that where a sequence is presented in a drawing, reference must be made to the sequence by use of a sequence identifier, either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the

drawing and their sequence identifiers in the Brief Description is clear. A sequence found in a drawing sheet is not a “Sequence Listing” under § 1.821(c) or (e). Therefore, a separate “Sequence Listing” would be required to comply with § 1.821(c). If the “Sequence Listing” was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper, a separate CRF of the “Sequence Listing” would be required to comply with § 1.821(e).

Section 1.821(e)(1) is proposed to be added to set forth the requirements in § 1.821(e)(1)(i) for submission of a CRF of the “Sequence Listing,” in compliance with § 1.824, when a “Sequence Listing” was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper for an application filed under 35 U.S.C. 111(a). The proposed rule (§ 1.821(e)(1)(ii)) also indicates that a statement is required to confirm that the CRF is identical to the “Sequence Listing” under § 1.821(c), when the submission of the “Sequence Listing” under § 1.821(c) was on physical sheets of paper or as a PDF image file via the USPTO patent electronic filing system.

Section 1.821(e)(2) is proposed to be added to set forth the requirements where the “Sequence Listing” under § 1.821(c) in an application submitted under 35 U.S.C. 371 is in a PDF file (§ 1.821(c)(2)) or on physical sheets of paper (§ 1.821(c)(3)), and not also as an ASCII plain text file, in compliance with § 1.824 (§ 1.821(c)(1)). In such situations, the following are required: (1) A copy of the “Sequence Listing” in CRF, in accordance with the requirements of § 1.824 (§ 1.821(e)(2)(i)); and (2) a statement that the sequence information contained in the CRF, submitted under § 1.821(e)(2)(i), is identical to the sequence information contained in the “Sequence Listing” submitted as a PDF image file (1.821(c)(2)) or on physical sheets of paper (1.821(c)(3)).

Section 1.821(e)(3) is proposed to be added to set forth the requirements where a “Sequence Listing” in ASCII plain text format, in compliance with § 1.824, has not been submitted for an international application under the Patent Cooperation Treaty (PCT); this application contains disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section and is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority. In such situations, the following are required: (1) A copy of the “Sequence Listing” in

CRF, in accordance with the requirements of § 1.824 (§ 1.821(e)(3)(i)); (2) a late furnishing fee for providing a “Sequence Listing” in response to an invitation, as set forth in § 1.445(a)(5) (§ 1.821(e)(3)(ii)); and (3) a statement that the sequence information contained in the CRF submitted under § 1.821(e)(3)(i) does not go beyond the disclosure in the international application as filed, or a statement that the information recorded in the ASCII plain text file submitted under § 1.821(e)(3)(i) is identical to the sequence listing contained in the international application as filed, as applicable (§ 1.821(e)(3)(iii)).

Section 1.821(e)(4) is proposed to be added to state that the CRF may not be retained as a part of the patent application file.

Section 1.821(f) is proposed to be reserved. The text previously found in this section is now in § 1.821(e)(2)(iii).

Section 1.821(g) is proposed to be revised to delete reference to § 1.821(f). Additionally, § 1.821(g) is proposed to be revised to state that any amendment to add or replace a “Sequence Listing” and CRF copy thereof must be submitted in accordance with the requirements of § 1.825.

Section 1.821(h) is proposed to be revised to reference paragraphs (e)(3) of this section instead of paragraphs (b) through (f). Section 1.821(h) is also proposed to be revised to add that a late furnishing fee, as set forth in § 1.445(a)(5), is required where a “Sequence Listing” under PCT Rule 13ter is provided.

Section 1.822: Section 1.822(b) is proposed to be revised to remove all prior references to WIPO Standard ST.25 (1998) and instead cross-reference new Appendices A through F to part 1 of 37 CFR, subpart G, which would contain the updated 2009 version of the standard. Therefore, the statement regarding permission for incorporation by reference and information about the availability of ST.25 from WIPO’s website is deleted.

Section 1.822(c)(1) is proposed to be revised to remove the prior reference to WIPO Standard ST.25 (1998) and instead cross-reference new Appendix A to part 1 of 37 CFR, subpart G, which would contain the updated 2009 version of the standard.

Section 1.822(c)(3) is proposed to be rewritten to replace instances of “typed” with “listed.”

Section 1.822(c)(5) is proposed to be rewritten to replace “presented” with “represented.”

Section 1.822(c)(6) is proposed to be rewritten to delete “be marked” and instead state “appear.”

Section 1.822(d)(1) is proposed to be revised to remove the prior reference to WIPO Standard ST.25 (1998) and instead cross-reference new Appendix C to part 1 of 37 CFR, subpart G, which would contain the updated 2009 version of the standard. When providing reference to the sequence in the text of the description or claims, the numeric sequence identifier is preceded by SEQ ID NO: Or the like, even if the actual sequence is also embedded in the text of the description or claims of the patent application. The use of SEQ ID NO: Is preferred but including “or the like” is intended to ensure that a formalities notice is not sent when an application uses, for example, “SEQ NO.” or “Seq. Id. No.” or any similar identification for an amino acid or nucleotide sequence in the specification or claims where it is clear that a sequence from the “Sequence Listing” is shown in the description or claims.

Section 1.822(d)(3) is proposed to be rewritten to replace “presented” with “represented.”

Section 1.822(d)(4) is proposed to be rewritten to replace “presented” with “represented.”

Section 1.822(d)(5) is proposed to be rewritten to replace the second occurrence of “presented” with “represented.”

Section 1.822(e) is proposed to be rewritten to replace “that is made up” with the term “composed.”

Section 1.823: The title of § 1.823 is proposed to be rewritten as “Requirements for content of a ‘Sequence Listing’ part of the specification.”

Section 1.823(a) is proposed to be rewritten to enumerate in § 1.823(a)(1) through (8) the content requirements for a “Sequence Listing” previously contained in §§ 1.821(c), 1.823(a)(1), 1.823(a)(2), and 1.823(b). Such requirements include, but are not limited to, sequence identifiers, the order and presentation of items of information, mandatory and optional information, the format as to line spacing, and the use of numeric identifiers.

Section 1.823(b)(1) is proposed to include a requirement for applications other than an international application in the international stage to contain an express incorporation by reference of the material submitted as an ASCII plain text file via the USPTO patent electronic filing system or on read-only optical disc(s) into the specification of the patent application to identify the name of the file, the date of creation, and the size of the file in bytes.

Section 1.823(b)(2) is proposed to specifically exempt the incorporation by

reference requirement in § 1.823(b)(1) from international applications during the international stage.

Section 1.823(b)(3) is proposed to be added to specifically set forth the format and content for a “Sequence Listing” that is submitted either as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper, as enumerated in § 1.823(b)(3)(i) through (vi).

Section 1.824: The title of § 1.824 is proposed to be rewritten as “Form and format for a nucleotide and/or amino acid sequence submission as an ASCII plain text file.”

Section 1.824(a) is proposed to be reorganized for clarity and to apply to any “Sequence Listing” submission as an ASCII plain text file, rather than only to the CRF of a “Sequence Listing.” Section 1.824(a)(1) is proposed to set forth the computer compatibilities and operating systems permitted. Section 1.824(a)(2) is proposed to indicate that ASCII plain text is required to be used, that all printable characters are permitted, and that no nonprintable characters are permitted, except ASCII Carriage Return plus ASCII Line Feed (CRLF) or Line Feed (LF) as line terminators. Section 1.824(a)(3) is proposed to set forth the naming convention for the ASCII plain text file of the “Sequence Listing.” Section 1.824(a)(4) is proposed to indicate that no more than 74 printable characters can be present on any given line. This number represents a change from current rules (where 72 characters are permitted). This change is intended to conform to the number of characters of a sequence listing as printed in a granted patent or a pre-grant publication.

Section 1.824(a)(5) is proposed to indicate that pagination is not permitted and that the ASCII plain text file must be one continuous file with no hard page breaks and no page numbering.

Section 1.824(b) is proposed to indicate that the ASCII plain text file must contain a copy of a single “Sequence Listing” in a single file and may be submitted through either the USPTO patent electronic filing system or on read-only optical disc(s), in compliance with § 1.52(e). Section 1.824(b)(2) is proposed to provide that file compression may be used and to define the parameters for file compression for submission on a read-only optical disc. Section 1.824 is proposed to be further revised to eliminate obsolete media on which the CRF of a “Sequence Listing” may be submitted. Section 1.824(c) is proposed to be eliminated, since the types of media available are specifically

enumerated in § 1.52(e). Section 1.824(d) is proposed to be eliminated, since the same provision is now included in § 1.52(e)(6).

Section 1.825: Sections 1.825(a) and (b) are proposed to be rewritten to distinguish between a newly added “Sequence Listing” and an amended/replacement “Sequence Listing” submission, respectively. Sections 1.825(a) and (b) are proposed to be rewritten to state when a new or amended/replacement copy of the CRF is also required upon submission of a “Sequence Listing.”

Section 1.825(a) is proposed to be amended to provide for submission of a “Sequence Listing” not present on the application filing date (1) as an ASCII plain text file via either the USPTO patent electronic filing system or on a read-only optical disc, (2) as a PDF image file via the USPTO patent electronic filing system, or (3) on physical sheets of paper. The amendment adding the “Sequence Listing” must include a request that the amendment be made in one of two ways. First, a “Sequence Listing” submitted as an ASCII plain text file (in accordance with § 1.825(a)(2)(i)) must be incorporated by reference in a separate paragraph of the specification. Second, a “Sequence Listing” submitted as a PDF image file via the USPTO patent electronic filing system (in accordance with § 1.825(a)(2)(ii)) or on physical sheets of paper (in accordance with § 1.825(a)(2)(iii)) must be placed after the abstract of the disclosure. Additionally, the “Sequence Listing” must be submitted together with two statements. The first statement must indicate the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all sequence data in the “Sequence Listing” (§ 1.821(a)(3)). The second statement must indicate that the “Sequence Listing” contains no new matter (§ 1.821(a)(4)). Finally, if needed, § 1.825(a)(5) provides that a new or substitute CRF must be submitted together with a statement, pursuant to § 1.825(a)(6), that the sequence information contained in the CRF is the same as the sequence information contained in the “Sequence Listing” that had been submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper.

Section 1.825(b) is proposed to be updated to require an amended/replacement “Sequence Listing” submitted: (1) As an ASCII plain text file via either the USPTO patent electronic filing system or on a read-

only optical disc (§ 1.825(b)(1)(i)), (2) as a PDF image file via the USPTO patent electronic filing system (§ 1.825(b)(1)(ii)), or (3) on physical sheets of paper (§ 1.825(b)(1)(iii)). The amended/replacement “Sequence Listing” must include a request that it be made in one of two ways. First, a request that the amended/replacement “Sequence Listing,” submitted as an ASCII plain text file, is incorporated by reference in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) (§ 1.825(b)(2)). The second way for such a request is by placing, after the abstract of the disclosure, the amended/replacement “Sequence Listing” that was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper (replacing any prior “Sequence Listing,” as applicable).

The amended/replacement “Sequence Listing” must be submitted together with three statements. The first statement must identify the location of all deletions, replacements, or additions to the “Sequence Listing” (§ 1.825(b)(3)). The second statement must indicate the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all amended sequence data in the replacement “Sequence Listing” (§ 1.825(b)(4)). The third statement must indicate that the replacement “Sequence Listing” contains no new matter (§ 1.825(b)(5)). Finally, if needed, a new or substitute CRF with the amendment incorporated therein (§ 1.825(b)(6)) must be submitted together with a statement that the sequence information contained in the CRF is the same as the sequence information contained in the replacement “Sequence Listing” submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.825(b)(7)).

Section 1.825(c) is proposed to replace current § 1.825(c), which is proposed to be moved to § 1.825(d). Section 1.825(c) relates to the required incorporation by reference statement when submitting a “Sequence Listing” under § 1.821(c)(1). Should the application as originally filed not contain the incorporation by reference, then the application must be amended to contain such an incorporation by reference.

Section 1.825(d) is proposed to contain the material from current § 1.825(c).

Subpart G of part 1: Appendices A through F are proposed to be added, explicitly incorporating the text of

Tables 1–6, Appendix 2, WIPO Standard ST.25 (2009) into the CFR. Appendix G is proposed to be added to incorporate the table that was previously located in § 1.823.

Rulemaking Considerations

A. Administrative Procedure Act: The changes proposed in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for the changes proposed in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the USPTO has chosen to seek public comment before implementing the rule to benefit from the public’s input.

B. Regulatory Flexibility Act: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The USPTO proposes to amend the rules of practice to permit higher-capacity physical media to be submitted to accommodate patent applications for

certain inventions that require significant data in ASCII text format that exceed the capacity of the Office’s electronic filing system. Additionally, extraction of compressed data files, which had not been permitted in the past for certain submissions, would be permitted if compliant with certain proposed new procedures. Other rules relating to certain obsolete and non-secure methods of presenting data would be eliminated. Lastly, this NPRM would remove an applicant’s ability to rely on a previously submitted CRF of required sequence information (*i.e.*, CRF transfer requests are eliminated). In light of the availability to download a “Sequence Listing” from granted U.S. patents and U.S. patent application publications via Public PAIR in the Supplemental Content tab, there is no longer a need for a CRF transfer.

This rulemaking would make more flexible the process for submitting large amounts of data and streamline other procedural steps related to data files associated with patent applications. This rulemaking’s proposed changes are largely procedural in nature, and do not impose any additional requirements or fees on applicants. For the foregoing reasons, the changes proposed in this NPRM will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, to the extent feasible and applicable, the USPTO has: (1) Reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency’s regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured

the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to

compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the majority of the paperwork and other information collection burdens discussed in this proposed rule have already been approved under the following Office of Management and Budget (OMB) Control Numbers: 0651–0024 (Sequence Listing), 0651–0031 (Patent Processing), 0651–0032 (Initial Patent Applications), and 0651–0064 (Patent Reexaminations and Supplemental Examinations).

Modifications to 0651–0024 because of this proposed rulemaking will be submitted to OMB for approval prior to this rule becoming effective. Modifications include the removal of the Request for Transfer of a Computer Readable Form Under 37 CFR 1.821(e) (PTO/SB/93), which will result in a slight reduction in burden associated with this information collection. The USPTO estimates that this information collection’s annual burden will decrease

by 1,550 responses and 155 burden hours. These burden estimates are based on the current OMB approved burdens (response volumes) associated with this information collection, which may be different from any forecasts mentioned in other parts of this proposed rule.

The changes discussed in this proposed rule do not affect the information collection requirements or burdens associated with 0651–0031, 0651–0032 and 0651–0064 listed above; therefore, the USPTO does not plan to take any additional actions on these information collections as a result of this rulemaking. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble and under the authority contained in 35 U.S.C. 2, as amended, the USPTO proposes to amend 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.52 by revising the heading and paragraphs (e) and (f) to read as follows:

§ 1.52 Language, paper, writing, margins, read-only optical disc specifications.

* * * * *

(e) *Electronic documents submitted on a read-only optical disc that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application, reexamination, or supplemental examination proceeding.*
(1) The following documents may be submitted to the Office on a read-only

optical disc in compliance with this paragraph:

(i) A “Computer Program Listing Appendix” (see § 1.96(c));

(ii) A “Sequence Listing” (submitted under § 1.821(c) in compliance with § 1.824); or

(iii) “Large Tables” (see § 1.58(c)).

(2) Read-only optical disc as used in this part means a finalized disc in conformance with International Organization for Standardization (ISO) 9660, on which the data is recorded so it is permanent and cannot be changed or erased, and is one of:

(i) Compact Disc-Read-Only Memory (CD-ROM) or a Compact Disc-Recordable (CD-R); or

(ii) Digital Video Disc-Recordable (DVD-R or DVD+R);

(3) Each read-only optical disc must conform to the following requirements:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS-DOS®, MS-Windows®, MacOS®, or Unix®/Linux®;

(iii) The contents of each read-only optical disc must be in American Standard Code for Information Interchange (ASCII) plain text and if compressed, must be compressed in accordance with §§ 1.58, 1.96, and 1.824, as applicable.

(4) Each read-only optical disc must be enclosed in a hard case within an unsealed, padded, and protective mailing envelope, and must be accompanied by a transmittal letter in accordance with paragraph (a) of this section, including the following information:

(i) First-named inventor (if known);

(ii) Title of the invention;

(iii) Attorney docket or file reference number (if applicable);

(iv) Application number and filing date (if known);

(v) The operating system (MS-DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®) used to produce the disc; and

(vi) The file(s) contained on the read-only optical disc, including the name of the file, the size of the file in bytes, and the date of creation.

(5) Each read-only optical disc must have a label permanently affixed thereto on which the following information has been hand-printed or typed:

(i) First-named inventor (if known);

(ii) Title of the invention;

(iii) Attorney docket or file reference number (if applicable);

(iv) Application number and filing date (if known);

(v) Date on which the data were recorded on the read-only optical disc; and

(vi) Disc order (e.g., “1 of X”), if multiple read-only optical discs are submitted.

(6) Read-only optical discs will not be returned to the applicant and may not be retained as part of the patent application file.

(7) Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.58(g) for “Large Tables,” § 1.96(c)(5) for a “Computer Program Listing Appendix,” and § 1.825(b) for a “Sequence Listing” or Computer Readable Form (CRF) of a “Sequence Listing.”

(8) The specification must contain an incorporation by reference of the material on each read-only optical disc in a separate paragraph (§ 1.77(b)(5)), identifying the name of each file, their date of creation, and their size in bytes, except for an international application in the international stage. The Office may require the applicant to amend the specification to include the material incorporated by reference.

(9) If a file is unreadable, it will be treated as not having been submitted, and a notice will be issued to supply a compliant submission.

(f) *Determining application size fees for applications containing electronic documents submitted on a read-only optical disc or via the USPTO patent electronic filing system—(1) Submission on Read-Only Optical Discs:* The application size fee required by § 1.16(s) or 1.492(j), for an application component submitted in part on a read-only optical disc in compliance with paragraph (e) of this section, shall be determined such that each three kilobytes of content submitted on a read-only optical disc shall be counted as a sheet of paper. Excluded from this determination is any ASCII plain text file submitted on a read-only optical disc under paragraph (e) of this section containing:

(i) Any “Sequence Listing” or CRF of a “Sequence Listing” in compliance with § 1.821(c) or (e); or

(ii) Any “Computer Program Listing Appendix” in compliance with § 1.96(c).

(2) *Submission via the USPTO Patent Electronic Filing System:* The application size fee required by § 1.16(s) or 1.492(j), for an application submitted in whole or in part via the USPTO patent electronic filing system, shall be determined such that the paper size equivalent will be considered to be 75% of the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the

USPTO patent electronic filing system. Excluded from this determination is any ASCII plain text file submitted via the USPTO patent electronic filing system containing:

(i) Any “Sequence Listing” or CRF of a “Sequence Listing,” in compliance with § 1.821(c) or (e); or

(ii) Any “Computer Program Listing Appendix” in compliance with § 1.96(c).

(3) Any submission of a “Sequence Listing” in electronic form of 300 MB–800 MB filed in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(1). Any submission of a “Sequence Listing” filed in electronic form that exceeds 800 MB in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(2).

■ 3. Amend § 1.58 by revising paragraphs (b) and (c) and adding paragraphs (d) through (j) to read as follows:

§ 1.58 Chemical and mathematical formulas and tables.

* * * * *

(b) Chemical and mathematical formulas and tables must be presented in compliance with § 1.52(a) and (b), except that chemical and mathematical formulas or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulas and tables must be chosen from a block (nonscript) type font or lettering style having capital letters that should be at least 0.422 cm (0.166 inches) high (e.g., preferably Arial, Times Roman, or Courier, with a font size of 12 point), but may be no smaller than 0.21 cm (0.08 inches) high (e.g., a font size of 6 point). A space at least 0.64 cm (0.25 inches) high should be provided between complex formulas and tables and the text. Chemical and mathematical formulas must be configured to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

(c) The following “Large Tables” may be submitted in electronic form in ASCII plain text via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), excluding an international application during the international stage:

(1) Any individual table that is more than 50 pages in length; or

(2) Multiple tables, if the total number of pages of all the tables in an

application exceeds 100 pages in length, where a table page is a page printed on paper, in conformance with paragraph (b) of this section.

(d) "Large Tables" submitted in electronic form in ASCII plain text must conform to the following requirements:

(1) Must maintain the spatial relationships (e.g., alignment of columns and rows) of the table elements when displayed to visually preserve the relational information they convey.

(2) Must have the following compatibilities:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS-DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®.

(3) Must be in ASCII plain text, where:

(i) All printable characters (including the space character) are permitted;

(ii) No nonprintable (ASCII control) characters are permitted, except ASCII Carriage Return plus ASCII Line Feed (CRLF) or Line Feed (LF) as line terminators.

(4) Must be named as *.txt, where "*" is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(5) Must be incorporated by reference in a separate paragraph of the specification, in accordance with § 1.77(b)(5).

(e) "Large Tables" submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted.

(f) "Large Tables" submitted in compliance with § 1.52(e) via read-only optical disc, must meet the following requirements:

(1) The ASCII plain text file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(2) A compressed file must not be self-extracting; and

(3) A compressed ASCII plain text file that does not fit on a single read-only optical disc may be split into multiple file parts in accordance with the target read-only optical disc size and labeled in compliance with § 1.52(e)(5)(vi).

(g) Any amendments to "Large Tables" in electronic form in ASCII plain text format must include:

(1) A replacement ASCII plain text file, in accordance with the requirements of paragraphs (d) through (f) of this section, submitted via the USPTO patent electronic filing system or on a read-only optical disc, in

compliance with § 1.52(e), labeled as "REPLACEMENT MM/DD/YYYY" (with the month, day, and year of creation indicated);

(2) A request that the amendment be made by incorporation by reference of the material in the replacement ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) identifying the name of the file, the date of creation, and the size of the file in bytes (see § 1.77(b)(5));

(3) A statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and

(4) A statement that the replacement ASCII plain text file contains no new matter.

(h) The specification of an application with "Large Tables" as an ASCII plain text file, present on the application filing date, without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5).

(i) Any read-only optical disc for "Large Tables" must be submitted in duplicate. The read-only optical disc and duplicate copy must be labeled "Copy 1" and "Copy 2," respectively. The transmittal letter that accompanies the read-only optical discs must include a statement that the two read-only optical discs are identical. In the event that the two read-only optical discs are not identical, the Office will use the read-only optical disc labeled "Copy 1" for further processing.

(j) Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.58(g), where the replacement read-only optical disc and copy must be labeled "COPY 1 REPLACEMENT MM/DD/YYYY" (with the month, day, and year of creation indicated), and "COPY 2 REPLACEMENT MM/DD/YYYY," respectively.

■ 4. Amend § 1.71 by revising paragraph (f) to read as follows:

§ 1.71 Detailed description and specification of the invention.

(f) The specification must commence on a separate sheet. Each sheet including part of the specification may not include other parts of the application or other information. The claim(s), abstract, and "Sequence Listing" (if required or submitted under § 1.821(c)) should not be included on a

sheet including any other part of the application.

* * * * *

■ 5. Amend § 1.77 by revising paragraphs (b)(5) and (13) to read as follows:

§ 1.77 Arrangement of application elements.

* * * * *

(b) * * *

(5) An incorporation by reference statement regarding the material on the one or more ASCII plain text files, submitted via the USPTO patent electronic filing system or on one or more read-only optical discs (see § 1.52(e)(8)), identifying the names of each file, the date of creation of each file, and the size of each file in bytes, for the following document types:

(i) A "Computer Program Listing Appendix" (see § 1.96(c));

(ii) A "Sequence Listing" (see § 1.821(c)); or

(iii) "Large Tables" (see § 1.58(c)).

* * * * *

(13) "Sequence Listing," required by § 1.821(c), that is submitted as a Portable Document Format (PDF) file (as set forth in § 1.821(c)(1)(ii)) via the USPTO patent electronic filing system or on physical sheets of paper (as set forth in § 1.821(c)(1)(iii)).

* * * * *

■ 6. Amend § 1.96 by revising paragraphs (a) and (c) to read as follows:

§ 1.96 Submission of computer program listings.

(a) General. Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of this section is defined as a document that lists in appropriate sequence the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language that will cause a computer to perform a desired procedure or task such as solve a problem, regulate the flow of work in a computer, or control or monitor events. Computer program listings may be submitted in patent applications, as set forth in paragraphs (b) and (c) of this section.

* * * * *

(c) As an appendix that will not be printed: Any computer program listing may, and any computer program listing having over 300 lines (up to 72 characters per line) must, be submitted as an electronic document in ASCII plain text, whether submitted via the

USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e). An electronic document containing such a computer program listing is to be referred to as a "Computer Program Listing Appendix." The "Computer Program Listing Appendix" will not be part of the printed patent. The specification must include an incorporation by reference of the "Computer Program Listing Appendix," in accordance with § 1.77(b)(5).

(1) A "Computer Program Listing Appendix" must conform to the following requirements:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS-DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®;

(iii) Line terminator: ASCII CRLF or LF only; and

(iv) Control Codes: The data must not be dependent on control characters or codes that are not defined in the ASCII character set.

(2) Each file must be named as *.txt, where "*" is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(3) Each file containing a "Computer Program Listing Appendix" submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted.

(4) A "Computer Program Listing Appendix" submitted in compliance with § 1.52(e) must conform to the following requirements:

(i) A separate read-only optical disc containing a "Computer Program Listing Appendix" must be submitted for each applicable application;

(ii) Multiple computer program listings for a single application may be placed on a single read-only optical disc;

(iii) Multiple read-only optical discs, containing one or more computer program listings, may be submitted for a single application, if necessary;

(iv) Any computer program listing may, and a computer program listing having a nested file structure must, when submitted in compliance with § 1.52(e), be compressed into a single file using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(v) Any compressed file must not be self-extracting; and

(vi) A compressed ASCII plain text file that does not fit on a single read-only optical disc may be split into

multiple file parts, in accordance with the target read-only optical disc size and labeled in compliance with § 1.52(e)(5)(vi).

(5) Any amendments to a "Computer Program Listing Appendix" in electronic form in ASCII plain text format must include:

(i) A replacement ASCII plain text file, in accordance with the requirements of paragraph (c) of this section, via the USPTO patent electronic filing system, or on a read-only optical disc, in compliance with § 1.52(e) and labeled as "COPY 1 REPLACEMENT MM/DD/YYYY" (with the month, day, and year of creation indicated) and "COPY 2 REPLACEMENT MM/DD/YYYY;"

(ii) A request that the amendment be made by incorporation by reference of the material in the replacement ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph) identifying the name of the file, the date of creation, and the size of the file in bytes (see § 1.77(b)(5));

(iii) A statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and

(iv) A statement that the replacement ASCII plain text file contains no new matter.

(6) The specification of a complete application with a "Computer Program Listing Appendix" as an ASCII plain text file, filed on the application filing date, without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5).

(7) Any read-only optical disc for a "Computer Program Listing Appendix" must be submitted in duplicate. The read-only optical disc and duplicate copy must be labeled "Copy 1" and "Copy 2," respectively. The transmittal letter that accompanies the read-only optical discs must include a statement that the two read-only optical discs are identical. In the event that the two read-only optical discs are not identical, the Office will use the read-only optical disc labeled "Copy 1" for further processing. Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.96(c)(5).

■ 7. Amend § 1.121 by revising paragraph (b) introductory text and adding paragraph (b)(6) to read as follows:

§ 1.121 Manner of making amendments in applications.

* * * * *

(b) *Specification.* Amendments to the specification, other than the claims, "Large Tables" (§ 1.58(c)), a "Computer Program Listing Appendix" (§ 1.96(c)(5) and (7)), and a "Sequence Listing" or CRF (§ 1.825), must be made by adding, deleting, or replacing a paragraph; by replacing a section; or by a substitute specification, in the manner specified in this section.

* * * * *

(6) Changes to "Large Tables," a "Computer Program Listing Appendix," or a "Sequence Listing" must be made in accordance with § 1.58(g) for "Large Tables," § 1.96(c)(5) for a "Computer Program Listing Appendix," and § 1.825 for a "Sequence Listing."

* * * * *

■ 8. Amend § 1.173 by revising paragraphs (b)(1) and (d) to read as follows:

§ 1.173 Reissue specification, drawings, and amendments.

* * * * *

(b) * * *

(1) *Specification other than the claims, "Large Tables" (§ 1.58(c)), a "Computer Program Listing Appendix" (§ 1.96(c)), or a "Sequence Listing" (§ 1.821(c)).* (i) Changes to the

specification, other than to the claims, "Large Tables" (§ 1.58(c)), a "Computer Program Listing Appendix" (§ 1.96(c)), or a "Sequence Listing" (§ 1.821(c)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to "Large Tables," a "Computer Program Listing Appendix," or a "Sequence Listing" must be made in accordance with § 1.58(g) for "Large Tables," § 1.96(c)(5) for a "Computer Program Listing Appendix," and § 1.825 for a "Sequence Listing."

* * * * *

(d) *Changes shown by markings.* Any changes relative to the patent being reissued that are made to the specification, including the claims but excluding "Large Tables," a "Computer Program Listing Appendix," or a "Sequence Listing," upon filing or by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be enclosed in brackets; and

(2) The matter to be added by reissue must be underlined.

* * * * *

■ 9. Amend § 1.530 by revising paragraph (d)(1) to read as follows:

§ 1.530 Statement by patent owner in *ex parte* reexamination; amendment by patent owner in *ex parte* or *inter partes* reexamination; inventorship change in *ex parte* or *inter partes* reexamination.

* * * * *

(d) * * *

(1) *Specification other than the claims, "Large Tables" (§ 1.58(c)), a "Computer Program Listing Appendix" (§ 1.96(c)), or a "Sequence Listing" (§ 1.821(c)).*

(i) Changes to the specification, other than to the claims, "Large Tables" (§ 1.58(c)), a "Computer Program Listing Appendix" (§ 1.96(c)), or a "Sequence Listing" (§ 1.821(c)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (f) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to "Large Tables," a "Computer Program Listing Appendix," or a "Sequence Listing" must be made, in accordance with § 1.58(g) for "Large Tables," § 1.96(c)(5) for a "Computer Program Listing Appendix," and § 1.825 for a "Sequence Listing."

* * * * *

■ 10. Amend § 1.821 by revising paragraphs (a), and (c) through (e), removing and reserving paragraph (f), and revising paragraphs (g) through (h) to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) Nucleotide and/or amino acid sequences, as used in §§ 1.821 through 1.825, are interpreted to mean an unbranched sequence of 4 or more amino acids or an unbranched sequence of 10 or more nucleotides. Branched sequences are specifically excluded from this definition. Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. "Specifically defined" means those amino acids other than "Xaa" and those nucleotide bases other than "n," defined in accordance with Appendices A

through F to this subpart. Nucleotides and amino acids are further defined as follows:

(1) *Nucleotides*: Nucleotides are intended to embrace only those nucleotides that can be represented using the symbols set forth in Appendix A to this subpart. Modifications (*e.g.*, methylated bases) may be described as set forth in Appendix B to this subpart, but shall not be shown explicitly in the nucleotide sequence.

(2) *Amino acids*: Amino acids are those L-amino acids commonly found in naturally occurring proteins and are listed in Appendix C to this subpart. Those amino acid sequences containing D-amino acids are not intended to be embraced by this definition. Any amino acid sequence that contains post-translationally modified amino acids may be described as the amino acid sequence that is initially translated using the symbols shown in Appendix C to this subpart with the modified positions (*e.g.*, hydroxylations or glycosylations) being described as set forth in Appendix D to this subpart, but these modifications shall not be shown explicitly in the amino acid sequence. Any peptide or protein that can be expressed as a sequence using the symbols in Appendix C to this subpart, in conjunction with a description in the Feature section, to describe, for example, modified linkages, cross links and end caps, non-peptidyl bonds, etc., is embraced by this definition.

Note 1 to paragraph (a): Appendices A through F contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

* * * * *

(c) Patent applications that contain disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section, must contain a "Sequence Listing" as a separate part of the specification containing each of those nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. The "Sequence Listing" must be submitted as follows, except for a national stage entry under § 1.495(b)(1), where the "Sequence Listing" has been previously communicated by the International Bureau or originally filed in the United States Patent and Trademark Office and complies with Patent Cooperation Treaty (PCT) Rule 5.2:

(1) As an ASCII plain text file, in compliance with § 1.824, submitted via

the USPTO patent electronic filing system or on a read-only optical disc under § 1.52(e), accompanied by an incorporation by reference statement of the ASCII plain text file, in a separate paragraph of the specification, in accordance with § 1.77(b)(5);

(2) As a PDF file via the USPTO patent electronic filing system; or

(3) On physical sheets of paper.

(d) Where the description or claims of a patent application discuss a sequence that is set forth in the "Sequence Listing," in accordance with paragraph (c) of this section, reference must be made to the sequence by use of a sequence identifier (§ 1.823(a)(5)), preceded by "SEQ ID NO:" In the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application. Where a sequence is presented in a drawing, reference must be made to the sequence by use of the sequence identifier (§ 1.823(a)(5)), either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the drawing and their sequence identifiers (§ 1.823(a)(5)) in the Brief Description is clear.

(e)(1) If the "Sequence Listing" under paragraph (c) is submitted in an application filed under 35 U.S.C. 111(a) as a PDF file (§ 1.821(c)(2)) via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.821(c)(3)), then the following must be submitted:

(i) A CRF of the "Sequence Listing," in accordance with the requirements of § 1.824; and

(ii) A statement that the sequence information contained in the CRF submitted under paragraph (e)(1)(i) of this section is identical to the sequence information contained in the "Sequence Listing" under paragraph (c) of this section.

(2) If the "Sequence Listing" under paragraph (c) of this section in an application submitted under 35 U.S.C. 371 is a PDF file (§ 1.821(c)(2)) or on physical sheets of paper (§ 1.821(c)(3)), and not also as an ASCII plain text file, in compliance with § 1.824 (§ 1.821(c)(1)), then the following must be submitted:

(i) A CRF of the "Sequence Listing," in accordance with the requirements of § 1.824; and

(ii) A statement that the sequence information contained in the CRF submitted under paragraph (e)(2)(i) of this section is identical to the sequence information contained in the "Sequence Listing" under paragraph (c)(2) or (3) of this section.

(3) If a "Sequence Listing" in ASCII plain text format, in compliance with § 1.824, has not been submitted for an international application under the PCT, and that application contains disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section, and is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, then the following must be submitted:

(i) A CRF of the "Sequence Listing," in accordance with the requirements of § 1.824;

(ii) The late furnishing fee for providing a "Sequence Listing" in response to an invitation, as set forth in § 1.445(a)(5); and

(iii) A statement that the sequence information contained in the CRF, submitted under paragraph (e)(3)(i) of this section, does not go beyond the disclosure in the international application as filed, or a statement that the information recorded in the ASCII plain text file, submitted under paragraph (e)(3)(i) of this section, is identical to the sequence listing contained in the international application as filed, as applicable.

(4) The CRF may not be retained as a part of the patent application file.

(f) [Reserved]

(g) If any of the requirements of paragraphs (b) through (e) of this section are not satisfied at the time of filing under 35 U.S.C. 111(a) or at the time of entering the national stage under 35 U.S.C. 371, the applicant will be notified and given a period of time within which to comply with such requirements in order to prevent abandonment of the application. Any amendment to add or replace a "Sequence Listing" and CRF copy thereof in reply to a requirement under this paragraph must be submitted in accordance with the requirements of § 1.825.

(h) If any of the requirements of paragraph (e)(3) of this section are not satisfied at the time of filing an international application under the PCT, and the application is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, the applicant may be sent a notice necessitating compliance with the requirements within a prescribed time period. Where a "Sequence Listing" under PCT Rule 13ter is provided in reply to a requirement under this paragraph, it must be accompanied by a statement that the information recorded in the ASCII plain text file under paragraph

(e)(3)(i) of this section is identical to the sequence listing contained in the international application as filed, or does not go beyond the disclosure in the international application as filed, as applicable. It must also be accompanied by the late furnishing fee, as set forth in § 1.445(a)(5). If the applicant fails to timely provide the required CRF, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed without the CRF, and the United States International Preliminary Examining Authority shall examine only to the extent that a meaningful examination can be performed without the CRF.

■ 11. Amend § 1.822 by revising paragraphs (b), (c)(1), (3), (5) and (6), (d)(1), (3) through (5), and (e) to read as follows:

§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.

* * * * *

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in Appendices A and C to this subpart. No code other than that specified in these sections shall be used in nucleotide and amino acid sequences. A modified base or modified or unusual amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or modified or unusual amino acid is one of those listed in Appendices B and D to this subpart, and the modification is also set forth in the Feature section. Otherwise, each occurrence of a base or amino acid not appearing in Appendices A and C, shall be listed in a given sequence as "n" or "Xaa," respectively, with further information, as appropriate, given in the Feature section, by including one or more feature keys listed in Appendices E and F to this subpart.

Note 1 to paragraph (b): Appendices A through F contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(c) * * *

(1) A nucleotide sequence shall be listed using the lowercase letter for representing the one-letter code for the nucleotide bases set forth in Appendix A to this subpart.

* * * * *

(3) The bases in the coding parts of a nucleotide sequence shall be listed as

triplets (codons). The amino acids corresponding to the codons in the coding parts of a nucleotide sequence shall be listed immediately below the corresponding codons. Where a codon spans an intron, the amino acid symbol shall be listed below the portion of the codon containing two nucleotides.

* * * * *

(5) A nucleotide sequence shall be represented, only by a single strand, in the 5 to 3 direction, from left to right.

(6) The enumeration of nucleotide bases shall start at the first base of the sequence with number 1. The enumeration shall be continuous through the whole sequence in the direction 5 to 3. The enumeration shall appear in the right margin, next to the line containing the one-letter codes for the bases, and giving the number of the last base of that line.

* * * * *

Note 2 to paragraph (c): Appendices A through F contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(d) * * *

(1) The amino acids in a protein or peptide sequence shall be listed using the three-letter abbreviation, with the first letter as an uppercase character, as in Appendix C to this subpart.

* * * * *

(3) An amino acid sequence shall be represented in the amino to carboxy direction, from left to right, and the amino and carboxy groups shall not be represented in the sequence.

(4) The enumeration of amino acids may start at the first amino acid of the first mature protein, with the number 1. When represented, the amino acids preceding the mature protein (e.g., pre-sequences, pro-sequences, pre-pro-sequences and signal sequences) shall have negative numbers, counting backwards starting with the amino acid next to number 1. Otherwise, the enumeration of amino acids shall start at the first amino acid at the amino terminal as number 1, and shall appear below every 5 amino acids of the sequence. The enumeration method for amino acid sequences that is set forth in this section remains applicable for amino acid sequences that are circular in configuration, with the exception that the designation of the first amino acid of the sequence may be made at the option of the applicant.

(5) An amino acid sequence that contains internal terminator symbols (e.g., "Ter," "*", or ".", etc.) may not be

represented as a single amino acid sequence but shall be represented as separate amino acid sequences.

Note 3 to paragraph (d): Appendices A through F contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(e) A sequence with a gap or gaps shall be represented as a plurality of separate sequences, with separate sequence identifiers (§ 1.823(a)(5)), with the number of separate sequences being equal in number to the number of continuous strings of sequence data. A sequence composed of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence.

■ 12. Revise § 1.823 to read as follows:

§ 1.823 Requirements for content of a “Sequence Listing” part of the specification.

(a) The “Sequence Listing” must comply with the following:

(1) The order and presentation of the items of information in the “Sequence Listing” shall conform to the arrangement in Appendix G. The submission of those items of information designated with an “M” is mandatory. The submission of those items of information designated with an “O” is optional.

(2) Each item of information shall begin on a new line with the numeric identifier enclosed in angle brackets, as shown in Appendix G.

(3) Set forth numeric identifiers <110> through <170> at the beginning of the “Sequence Listing.”

(4) Include each disclosed nucleotide and/or amino acid sequence, as defined in § 1.821(a).

(5) Assign each sequence with a separate sequence identifier, beginning with 1 and increasing sequentially by integers, and include the sequence identifier in numeric identifier <210>.

(6) Use the code “000” in place of the sequence where no sequence is present for a sequence identifier.

(7) Include the total number of SEQ ID NOs in numeric identifier <160>, as defined in Appendix G, whether followed by a sequence or by the code “000.”

(8) Must not contain more than 74 characters per line.

(b)(1) Unless paragraph (b)(2) of this section applies, if the “Sequence Listing” required by § 1.821(c) is submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc, in

compliance with § 1.52(e), then the specification must contain a statement in a separate paragraph (see § 1.77(b)(5)) that incorporates by reference the material in the ASCII plain text file identifying:

- (i) The name of the file;
- (ii) The date of creation; and
- (iii) The size of the file in bytes.

(2) If the “Sequence Listing” required by § 1.821(c) is submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e) for an international application during the international stage, then incorporation by reference of the material in the ASCII plain text file is not required.

(3) A “Sequence Listing” required by § 1.821(c) that is submitted as a PDF file (§ 1.821(c)(2)) via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.821(c)(3)), setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (a) of this section:

- (i) Must begin on a new page;
- (ii) Must be titled “Sequence Listing”;
- (iii) Must not include material other than the “Sequence Listing” itself;
- (iv) Must have sheets containing no more than 66 lines, with each line containing no more than 74 characters;
- (v) Should have sheets numbered independently of the numbering of the remainder of the application; and
- (vi) Should use a fixed-width font exclusively throughout.

■ 13. Revise § 1.824 to read as follows:

§ 1.824 Form and format for a nucleotide and/or amino acid sequence submission as an ASCII plain text file.

(a) A “Sequence Listing” under § 1.821(c)(1) and the CRF required by § 1.821(e) submitted as an ASCII plain text file may be created by any means, such as text editors, nucleotide/amino acid sequence editors, or other custom computer programs; however, the ASCII plain text file must conform to the following requirements:

(1) Must have the following compatibilities:

- (i) Computer compatibility: PC or Mac®;
- (ii) Operating system compatibility: MS-DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®.

(2) Must be in ASCII plain text, where:

- (i) All printable characters (including the space character) are permitted;
- (ii) No nonprintable (ASCII control) characters are permitted, except ASCII CRLF or LF as line terminators.

(3) Must be named as *.txt, where “*” is one character or a combination of

characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(4) Must contain no more than 74 printable characters in each line.

(5) Pagination is not permitted; the ASCII plain text file must be one continuous file, with no “hard page break” codes and no page numbering.

(b) The ASCII plain text file must contain a copy of a single “Sequence Listing” in a single file and be submitted either:

(1) Electronically via the USPTO patent electronic filing system, where the file must not exceed 100 MB, and file compression is not permitted; or

(2) On read-only optical disc(s) in compliance with § 1.52(e), where:

(i) A file that is not compressed must be contained on a single read-only optical disc;

(ii) The file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(iii) A compressed file must not be self-extracting; and

(iv) A compressed ASCII plain text file that does not fit on a single read-only optical disc may be split into multiple file parts, in accordance with the target read-only optical disc size, and labeled in compliance with 1.52(e)(5)(vi).

■ 14. Revise § 1.825 to read as follows:

§ 1.825 Amendment to add or replace a “Sequence Listing” and CRF copy thereof.

(a) Any amendment adding a “Sequence Listing” (§ 1.821(c)) after the application filing date must include:

(1) A “Sequence Listing,” in accordance with the requirements of §§ 1.821 through 1.824, submitted as:

(i) An ASCII plain text file under § 1.821(c)(1) via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e);

(ii) PDF file via the USPTO patent electronic filing system; or

(iii) Physical sheets of paper;

(2) A request that the amendment be made:

(i) By incorporation by reference of the material in the ASCII plain text file, in a separate paragraph of the specification, identifying the name of the file, the date of creation, and the size of the file in bytes (see § 1.77(b)(5)), for a “Sequence Listing” submitted under § 1.821(c)(1), except when submitted to the United States International Preliminary Examining Authority for an international application; or

(ii) By inserting, after the abstract of the disclosure, a “Sequence Listing”

submitted as a PDF file under § 1.821(c)(2) or submitted on physical sheets of paper under § 1.821(c)(3), except when submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that indicates the basis for the amendment, with specific references to particular parts of the application (specification, claims, drawings) for all sequence data in the “Sequence Listing” in the application as originally filed;

(4) A statement that the “Sequence Listing” includes no new matter;

(5) A new or substitute CRF under § 1.821(e), if:

(i) The added “Sequence Listing” is submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3); and

(ii) A CRF, under § 1.821(e), was not submitted, not compliant with § 1.824, or not the same as the “Sequence Listing”; and

(6) A statement that the sequence information contained in the CRF is the same as the sequence information contained in the added “Sequence Listing,” if submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3).

(b) Any amendment to a “Sequence Listing” (§ 1.821(c)) must include:

(1) A replacement “Sequence Listing,” in accordance with the requirements of §§ 1.821 through 1.824, submitted as:

(i) An ASCII plain text file under § 1.821(c)(1) via the USPTO patent electronic filing system, or on a read-only optical disc, in compliance with § 1.52(e), labeled as “REPLACEMENT MM/DD/YYYY” (with the month, day, and year of creation indicated);

(ii) A PDF file via the USPTO patent electronic filing system; or

(iii) Physical sheets of paper;

(2) A request that the amendment be made:

(i) By incorporation by reference of the material in the ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) identifying the name of the file, the date of creation, and the size of the file in bytes (see § 1.77(b)(5)) for a “Sequence Listing” under § 1.821(c)(1), except when submitted to the United States International Preliminary Examining Authority for an international application; or

(ii) By placing, after the abstract of the disclosure, a “Sequence Listing” submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3) (replacing any prior “Sequence Listing,” as applicable), except when submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that identifies the location of all deletions, replacements, or additions to the “Sequence Listing”;

(4) A statement that indicates the basis for the amendment, with specific references to particular parts of the application (specification, claims, drawings) as originally filed for all amended sequence data in the replacement “Sequence Listing”;

(5) A statement that the replacement “Sequence Listing” includes no new matter;

(6) A new or substitute CRF under § 1.821(e) with the amendment incorporated therein, if:

(i) The replacement “Sequence Listing” is submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3); and

(ii) A CRF, under § 1.821(e), was not submitted, not compliant with § 1.824,

or not the same as the submitted “Sequence Listing”; and

(7) A statement that the sequence information contained in the CRF is the same as the sequence information contained in the replacement “Sequence Listing” when submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3).

(c) The specification of a complete application, filed on the application filing date, with a “Sequence Listing” as an ASCII plain text file, under § 1.821(c)(1), without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5), except for international applications during the international stage or national stage.

(d) Any appropriate amendments to the “Sequence Listing” in a patent (e.g., by reason of reissue, reexamination, or certificate of correction) must comply with the requirements of paragraph (b) of this section.

■ 15. Redesignate the appendix to subpart G of part 1 as appendix G, add appendices A through F, and revise newly redesignated appendix G as follows:

Appendices A Through G of Subpart G of Part 1

Appendix A: List of Nucleotides

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009)

Symbol	Meaning	Origin of designation
a	a	adenine.
g	g	guanine.
c	c	cytosine.
t	t	thymine.
u	u	uracil.
r	g or a	purine
y	t/u or c	pyrimidine.
m	a or c	amino.
k	g or t/u	keto.
s	g or c	strong interactions 3H-bonds.
w	a or t/u	weak interactions 2H-bonds.
b	g or c or t/u	not a.
d	a or g or t/u	not c.
h	a or c or t/u	not g.
v	a or g or c	not t, not u.
n	a or g or c or t/u, unknown, or other	ary

Appendix B: List of Modified Nucleotides

Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid

Sequence Listings in Patent Applications (2009)

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial

Symbol	Meaning
ac4c	4-acetylcytidine.
chm5u	5-(carboxyhydroxymethyl)uridine.
cm	2'-O-methylcytidine.
cmnm5s2u	5-carboxymethylaminomethyl-2-thiouridine.
cmnm5u	5-carboxymethylaminomethyluridine.
d	dihydrouridine.
fm	2'-O-methylpseudouridine.
gal q	beta, D-galactosylqueuosine.
gm	2'-O-methylguanosine.
i	inosine.
i6a	N6-isopentenyladenosine.
m1a	1-methyladenosine.
m1f	1-methylpseudouridine.
m1g	1-methylguanosine.
m1i	1-methylinosine.
m22g	2,2-dimethylguanosine.
m2a	2-methyladenosine.
m2g	2-methylguanosine.
m3c	3-methylcytidine.
m5c	5-methylcytidine.
m6a	N6-methyladenosine.
m7g	7-methylguanosine.
mam5u	5-methylaminomethyluridine.
mam5s2u	5-methoxyaminomethyl-2-thiouridine.
man q	beta, D-mannosylqueuosine.
mcm5s2u	5-methoxycarbonylmethyl-2-thiouridine.
mcm5u	5-methoxycarbonylmethyluridine.
mo5u	5-methoxyuridine.
ms2i6a	2-methylthio-N6-isopentenyladenosine.
ms2t6a	N-((9-beta-D-ribofuranosyl-2-methylthiopurine-6-yl)carbamoyl)threonine.
mt6a	N-((9-beta-D-ribofuranosylpurine-6-yl)N-methylcarbamoyl)threonine.
mv	uridine-5-oxyacetic acid-methylester.
o5u	uridine-5-oxyacetic acid.
osyw	wybutoxosine.
p	pseudouridine.
q	queuosine.
s2c	2-thiocytidine.
s2t	5-methyl-2-thiouridine.
s2u	2-thiouridine.
s4u	4-thiouridine.
t	5-methyluridine.
t6a	N-((9-beta-D-ribofuranosylpurine-6-yl)-carbamoyl)threonine.
tm	2'-O-methyl-5-methyluridine.
um	2'-O-methyluridine.
yw	wybutosine.
x	3-(3-amino-3-carboxy-propyl)uridine, (acp3)u.

Appendix C: List of Amino Acids

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009)

Symbol	Meaning
Ala	Alanine.
Cys	Cysteine.
Asp	Aspartic Acid.
Glu	Glutamic Acid.
Phe	Phenylalanine.
Gly	Glycine.
His	Histidine.
Ile	Isoleucine.

Symbol	Meaning
Lys	Lysine.
Leu	Leucine.
Met	Methionine.
Asn	Asparagine.
Pro	Proline.
Gln	Glutamine.
Arg	Arginine.
Ser	Serine.
Thr	Threonine.
Val	Valine.
Trp	Tryptophan.
Tyr	Tyrosine.
Asx	Asp or Asn.
Glx	Glu or Gln.
Xaa	unknown or other.

Appendix D: List of Modified and Unusual Amino Acids

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009)

Symbol	Meaning
Aad	2-Aminoadipic acid.
bAad	3-Aminoadipic acid.
bAla	beta-Alanine, beta-Aminopropionic acid.
Abu	2-Aminobutyric acid.

Symbol	Meaning	Symbol	Meaning	Symbol	Meaning
4Abu	4-Aminobutyric acid, piperidinic acid.	Hyl	Hydroxylysine.	Orn	Ornithine.
Acp	6-Aminocaproic acid.	aHyl	allo-Hydroxylysine.		
Ahe	2-Aminoheptanoic acid.	3Hyp	3-Hydroxyproline.		
Aib	2-Aminoisobutyric acid.	4Hyp	4-Hydroxyproline.		
bAib	3-Aminoisobutyric acid.	Ide	Isodesmosine.		
Apm	2-Aminopimelic acid.	alle	allo-Isoleucine.		
Dbu	2,4 Diaminobutyric acid.	MeGly	N-Methylglycine, sarcosine.		
Des	Desmosine.	Melle	N-Methylisoleucine.		
Dpm	2,2'-Diaminopimelic acid.	MeLys	6-N-Methyllysine.		
Dpr	2,3-Diaminopropionic acid.	MeVal	N-Methylvaline.		
EtGly	N-Ethylglycine.	Nva	Norvaline.		
EtAsn	N-Ethylasparagine.	Nle	Norleucine.		

Appendix E: List of Feature Keys Related to Nucleotide Sequences

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009)

Key	Description
allele	a related individual or strain contains stable, alternative forms of the same gene, which differs from the presented sequence at this location (and perhaps others).
attenuator	(1) region of DNA at which regulation of termination of transcription occurs, which controls the expression of some bacterial operons; (2) sequence segment located between the promoter and the first structural gene that causes partial termination of transcription.
C_region	constant region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; includes one or more exons depending on the particular chain.
CAAT_signal	CAAT box; part of a conserved sequence located about 75 bp upstream of the start point of eukaryotic transcription units which may be involved in RNA polymerase binding; consensus=GG (C or T) CAATCT.
CDS	coding sequence; sequence of nucleotides that corresponds with the sequence of amino acids in a protein (location includes stop codon); feature includes amino acid conceptual translation.
conflict	independent determinations of the "same" sequence differ at this site or region.
D-loop	displacement loop; a region within mitochondrial DNA in which a short stretch of RNA is paired with one strand of DNA, displacing the original partner DNA strand in this region; also used to describe the displacement of a region of one strand of duplex DNA by a single stranded invader in the reaction catalyzed by RecA protein.
D-segment	diversity segment of immunoglobulin heavy chain, and T-cell receptor beta chain.
enhancer	a cis-acting sequence that increases the utilization of (some) eukaryotic promoters, and can function in either orientation and in any location (upstream or downstream) relative to the promoter.
exon	region of genome that codes for portion of spliced mRNA; may contain 5'UTR, all CDSs, and 3'UTR.
GC_signal	GC box; a conserved GC-rich region located upstream of the start point of eukaryotic transcription units which may occur in multiple copies or in either orientation; consensus=GGGCGG.
gene	region of biological interest identified as a gene and for which a name has been assigned.
iDNA	intervening DNA; DNA which is eliminated through any of several kinds of recombination.
intron	a segment of DNA that is transcribed, but removed from within the transcript by splicing together the sequences (exons) on either side of it.
J_segment	joining segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains.
LTR	long terminal repeat, a sequence directly repeated at both ends of a defined sequence, of the sort typically found in retroviruses.
mat_peptide	mature peptide or protein coding sequence; coding sequence for the mature or final peptide or protein product following post-translational modification; the location does not include the stop codon (unlike the corresponding CDS).
misc_binding	site in nucleic acid which covalently or non-covalently binds another moiety that cannot be described by any other Binding key (primer_bind or protein_bind).
misc_difference	feature sequence is different from that presented in the entry and cannot be described by any other Difference key (conflict, unsure, old_sequence, mutation, variation, allele, or modified_base).
misc_feature	region of biological interest which cannot be described by any other feature key; a new or rare feature.
misc_recomb	site of any generalized, site-specific or replicative recombination event where there is a breakage and reunion of duplex DNA that cannot be described by other recombination keys (iDNA and virion) or qualifiers of source key (/insertion_seq, /transposon, /proviral).
misc_RNA	any transcript or RNA product that cannot be defined by other RNA keys (prim_transcript, precursor_RNA, mRNA, 5'clip, 3'clip, 5'UTR, 3'UTR, exon, CDS, sig_peptide, transit_peptide, mat_peptide, intron, polyA_site, rRNA, tRNA, scRNA, and snRNA).
misc_signal	any region containing a signal controlling or altering gene function or expression that cannot be described by other Signal keys (promoter, CAAT_signal, TATA_signal, -35_signal, -10_signal, GC_signal, RBS, polyA_signal, enhancer, attenuator, terminator, and rep_origin).
misc_structure	any secondary or tertiary structure or conformation that cannot be described by other Structure keys (stem_loop and D-loop).
modified_base	the indicated nucleotide is a modified nucleotide and should be substituted for by the indicated molecule (given in the mod_base qualifier value).
mRNA	messenger RNA; includes 5' untranslated region (5'UTR), coding sequences (CDS, exon) and 3' untranslated region (3'UTR).
mutation	a related strain has an abrupt, inheritable change in the sequence at this location.
N_region	extra nucleotides inserted between rearranged immunoglobulin segments.
old_sequence	the presented sequence revises a previous version of the sequence at this location.
polyA_signal	recognition region necessary for endonuclease cleavage of an RNA transcript that is followed by polyadenylation; consensus=AATAAA.
polyA_site	site on an RNA transcript to which will be added adenine residues by post-transcriptional polyadenylation.

Key	Description
precursor_RNA	any RNA species that is not yet the mature RNA product; may include 5' clipped region (5'clip), 5' untranslated region (5'UTR), coding sequences (CDS, exon), intervening sequences (intron), 3' untranslated region (3'UTR), and 3' clipped region (3'clip).
prim_transcript	primary (initial, unprocessed) transcript; includes 5' clipped region (5'clip), 5' untranslated region (5'UTR), coding sequences (CDS, exon), intervening sequences (intron), 3' untranslated region (3'UTR), and 3' clipped region (3'clip).
primer_bind	non-covalent primer binding site for initiation of replication, transcription, or reverse transcription; includes site(s) for synthetic, for example, PCR primer elements.
promoter	region on a DNA molecule involved in RNA polymerase binding to initiate transcription.
protein_bind	non-covalent protein binding site on nucleic acid.
RBS	ribosome binding site.
repeat_region	region of genome containing repeating units.
repeat_unit	single repeat element.
rep_origin	origin of replication; starting site for duplication of nucleic acid to give two identical copies.
rRNA	mature ribosomal RNA; the RNA component of the ribonucleoprotein particle (ribosome) which assembles amino acids into proteins.
S_region	switch region of immunoglobulin heavy chains; involved in the rearrangement of heavy chain DNA leading to the expression of a different immunoglobulin class from the same B-cell.
satellite	many tandem repeats (identical or related) of a short basic repeating unit; many have a base composition or other property different from the genome average that allows them to be separated from the bulk (main band) genomic DNA.
scRNA	small cytoplasmic RNA; any one of several small cytoplasmic RNA molecules present in the cytoplasm and (sometimes) nucleus of a eukaryote.
sig_peptide	signal peptide coding sequence; coding sequence for an N-terminal domain of a secreted protein; this domain is involved in attaching nascent polypeptide to the membrane; leader sequence.
snRNA	small nuclear RNA; any one of many small RNA species confined to the nucleus; several of the snRNAs are involved in splicing or other RNA processing reactions.
source	identifies the biological source of the specified span of the sequence; this key is mandatory; every entry will have, as a minimum, a single source key spanning the entire sequence; more than one source key per sequence is permissible.
stem_loop	hairpin; a double-helical region formed by base-pairing between adjacent (inverted) complementary sequences in a single strand of RNA or DNA.
STS	Sequence Tagged Site; short, single-copy DNA sequence that characterizes a mapping landmark on the genome and can be detected by PCR; a region of the genome can be mapped by determining the order of a series of STSs.
TATA_signal	TATA box; Goldberg-Hogness box; a conserved AT-rich septamer found about 25 bp before the start point of each eukaryotic RNA polymerase II transcript unit which may be involved in positioning the enzyme for correct initiation; consensus=TATA(A or T)A(A or T).
terminator	sequence of DNA located either at the end of the transcript or adjacent to a promoter region that causes RNA polymerase to terminate transcription; may also be site of binding of repressor protein.
transit_peptide	transit peptide coding sequence; coding sequence for an N-terminal domain of a nuclear-encoded organellar protein; this domain is involved in post-translational import of the protein into the organelle.
tRNA	mature transfer RNA, a small RNA molecule (75–85 bases long) that mediates the translation of a nucleic acid sequence into an amino acid sequence.
unsure	author is unsure of exact sequence in this region.
V_region	variable region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; codes for the variable amino terminal portion; can be made up from V_segments, D_segments, N_regions, and J_segments.
V_segment	variable segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; codes for most of the variable region (V_region) and the last few amino acids of the leader peptide.
variation	a related strain contains stable mutations from the same gene (for example, RFLPs, polymorphisms, etc.) which differ from the presented sequence at this location (and possibly others).
3'clip	3'-most region of a precursor transcript that is clipped off during processing.
3'UTR	region at the 3' end of a mature transcript (following the stop codon) that is not translated into a protein.
5'clip	5'-most region of a precursor transcript that is clipped off during processing.
5'UTR	region at the 5' end of a mature transcript (preceding the initiation codon) that is not translated into a protein.
-10_signal	pribnow box; a conserved region about 10 bp upstream of the start point of bacterial transcription units which may be involved in binding RNA polymerase; consensus=TATAaT.
-35_signal	a conserved hexamer about 35 bp upstream of the start point of bacterial transcription units; consensus=TTGACA [] or TGTTGACA [].

Appendix F: List of Feature Keys Related to Protein Sequences

Source: World Intellectual Property Organization (WIPO) Handbook on Industrial

Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid

Sequence Listings in Patent Applications (2009)

Key	Description
CONFLICT	different papers report differing sequences.
VARIANT	authors report that sequence variants exist.
VARSPLIC	description of sequence variants produced by alternative splicing.

Key	Description
MUTAGEN	site which has been experimentally altered.
MOD_RES	post-translational modification of a residue.
ACETYLATION	N-terminal or other.
AMIDATION	generally at the C-terminal of a mature active peptide.
BLOCKED	undetermined N- or C-terminal blocking group.
FORMYLATION	of the N-terminal methionine.
GAMMA-CARBOXYGLUTAMIC ACID HYDROXYLATION	of asparagine, aspartic acid, proline, or lysine.
METHYLATION	generally of lysine or arginine.
PHOSPHORYLATION	of serine, threonine, tyrosine, aspartic acid or histidine.
PYRROLIDONE CARBOXYLIC ACID	N-terminal glutamate which has formed an internal cyclic lactam.
SULFATATION	generally of tyrosine.
LIPID	covalent binding of a lipidic moiety.
MYRISTATE	myristate group attached through an amide bond to the N-terminal glycine residue of the mature form of a protein or to an internal lysine residue.
PALMITATE	palmitate group attached through a thioether bond to a cysteine residue or through an ester bond to a serine or threonine residue.
FARNESYL	farnesyl group attached through a thioether bond to a cysteine residue.
GERANYL-GERANYL	geranyl-geranyl group attached through a thioether bond to a cysteine residue.
GPI-ANCHOR	glycosyl-phosphatidylinositol (GPI) group linked to the alpha-carboxyl group of the C-terminal residue of the mature form of a protein.
N-ACYL DIGLYCERIDE	N-terminal cysteine of the mature form of a prokaryotic lipoprotein with an amide-linked fatty acid and a glyceryl group to which two fatty acids are linked by ester linkages.
DISULFID	disulfide bond; the 'FROM' and 'TO' endpoints represent the two residues which are linked by an intra-chain disulfide bond; if the 'FROM' and 'TO' endpoints are identical, the disulfide bond is an interchain one and the description field indicates the nature of the cross-link.
THIOLEST	thiolester bond; the 'FROM' and 'TO' endpoints represent the two residues which are linked by the thiolester bond.
THIOETH	thioether bond; the 'FROM' and 'TO' endpoints represent the two residues which are linked by the thioether bond.
CARBOHYD	glycosylation site; the nature of the carbohydrate (if known) is given in the description field.
METAL	binding site for a metal ion; the description field indicates the nature of the metal.
BINDING	binding site for any chemical group (co-enzyme, prosthetic group, etc.); the chemical nature of the group is given in the description field.
SIGNAL	extent of a signal sequence (prepeptide).
TRANSIT	extent of a transit peptide (mitochondrial, chloroplastic, or for a microbody).
PROPEP	extent of a propeptide.
CHAIN	extent of a polypeptide chain in the mature protein.
PEPTIDE	extent of a released active peptide.
DOMAIN	extent of a domain of interest on the sequence; the nature of that domain is given in the description field.
CA_BIND	extent of a calcium-binding region.
DNA_BIND	extent of a DNA-binding region.
NP_BIND	extent of a nucleotide phosphate binding region; the nature of the nucleotide phosphate is indicated in the description field.
TRANSMEM	extent of a transmembrane region.
ZN_FING	extent of a zinc finger region.
SIMILAR	extent of a similarity with another protein sequence; precise information, relative to that sequence, is given in the description field.
REPEAT	extent of an internal sequence repetition.
HELIX	secondary structure: Helices, for example, Alpha-helix, 3(10) helix, or Pi-helix.
STRAND	secondary structure: Beta-strand, for example, Hydrogen bonded beta-strand, or Residue in an isolated beta-bridge.
TURN	secondary structure Turns, for example, H-bonded turn (3-turn, 4-turn, or 5-turn).
ACT_SITE	amino acid(s) involved in the activity of an enzyme.
SITE	any other interesting site on the sequence.
INIT_MET	the sequence is known to start with an initiator methionine.
NON_TER	the residue at an extremity of the sequence is not the terminal residue; if applied to position 1, this signifies that the first position is not the N-terminus of the complete molecule; if applied to the last position, it signifies that this position is not the C-terminus of the complete molecule; there is no description field for this key.
NON_CONS	non consecutive residues; indicates that two residues in a sequence are not consecutive and that there are a number of unsequenced residues between them.
UNSURE	uncertainties in the sequence; used to describe region(s) of a sequence for which the authors are unsure about the sequence assignment.

Appendix G: Numeric Identifiers

Numeric identifier	Definition	Comments and format	Mandatory (M) or optional (O)
<110>	Applicant	If Applicant is inventor, then preferably max. of 10 names; one name per line; preferable format: Surname, Other Names and/or Initials.	M.
<120>	Title of Invention .....	.....	M.
<130>	File Reference	Personal file reference	M when filed prior to assignment or appl. number.
<140>	Current Application Number	Specify as: US 09/999,999 or PCT/US09/99999	M, if available.
<141>	Current Filing Date	Specify as: yyyy-mm-dd	M, if available.
<150>	Prior Application Number	Specify as: US 09/999,999 or PCT/US09/99999	M, if applicable include priority documents under 35 U.S.C. 119 and 120.
<151>	Prior Application Filing Date	Specify as: yyyy-mm-dd	M, if applicable.
<160>	Number of SEQ ID NOs	Count includes total number of SEQ ID NOs	M.
<170>	Software	Name of software used to create the "Sequence Listing."	O.
<210>	SEQ ID NO:#:	Response shall be an integer representing the SEQ ID NO shown.	M.
<211>	Length	Respond with an integer expressing the number of bases or amino acid residues.	M.
<212>	Type	Whether presented sequence molecule is DNA, RNA, or PRT (protein). If a nucleotide sequence contains both DNA and RNA fragments, the type shall be "DNA." In addition, the combined DNA/RNA molecule shall be further described in the <220> to <223> feature section.	M.
<213>	Organism	Scientific name, i.e. Genus/species, Unknown or Artificial Sequence. In addition, the "Unknown" or "Artificial Sequence" organisms shall be further described in the <220> to <223> feature section.	M.
<220>	Feature	Leave blank after <220>. <221-223> provide for a description of points of biological significance in the sequence.	M, under the following conditions: if "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is "Artificial Sequence" or "Unknown"; if molecule is combined DNA/RNA.
<221>	Name/Key	Provide appropriate identifier for feature, from WIPO Standard ST.25 (2009), Appendices E and F to this subpart.	M, under the following conditions: if "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence.
<222>	Location	Specify location within sequence; where appropriate, state number of first and last bases/amino acids in feature.	M, under the following conditions: if "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence.
<223>	Other Information	Other relevant information; four lines maximum	M, under the following conditions: if "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is "Artificial Sequence" or "Unknown"; if molecule is combined DNA/RNA.
<300>	Publication Information	Leave blank after <300>	O.
<301>	Authors	Preferably max. of 10 named authors of publication; specify one name per line; preferable format: Surname, Other Names and/or Initials.	O.
<302>	Title .....	.....	O.
<303>	Journal .....	.....	O.
<304>	Volume .....	.....	O.
<305>	Issue .....	.....	O.
<306>	Pages .....	.....	O.
<307>	Date	Journal date on which data published; specify as yyyy-mm-dd, MMM-yyyy or Season-yyyy.	O.
<308>	Database Accession Number	Accession number assigned by database, including database name.	O.
<309>	Database Entry Date	Date of entry in database; specify as yyyy-mm-dd or MMM-yyyy.	O.
<310>	Patent Document Number	Document number; for patent-type citations only. Specify as, for example, US 09/999,999.	O.
<311>	Patent Filing Date	Document filing date, for patent-type citations only; specify as yyyy-mm-dd.	O.

Numeric identifier	Definition	Comments and format	Mandatory (M) or optional (O)
<312>	Publication Date	Document publication date, for patent-type citations only; specify as yyyy-mm-dd.	O.
<313>	Relevant Residues	FROM (position) TO (position)	O.
<400>	Sequence	SEQ ID NO should follow the numeric identifier and should appear on the line preceding the actual sequence.	M.

Andrew Hirshfeld,
Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021-10421 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210517-0107]

RIN 0648-BK59

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes new 2021–2022 butterfish specifications, while maintaining the current longfin squid, *Illex* squid, and Atlantic mackerel specifications for 2021–2023. This action also adjusts the dealer reporting requirement and adjusts the closure threshold for the *Illex* squid fishery to avoid overages. These proposed specifications are intended to promote the sustainable utilization and conservation of the mackerel, squid, and butterfish resources. Additionally, this action reaffirms previously approved Atlantic chub mackerel specifications for 2021–2022.

DATES: Public comments must be received by June 10, 2021.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Supplemental Information Report (SIR), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive

Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331.

You may submit comments, identified by NOAA–NMFS–2021–0048, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA–NMFS–2021–0048 in the Search box. Click the “Comment” icon, complete the required fields, and Enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281–9352.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking proposes specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years, for Atlantic mackerel, longfin squid, *Illex* squid, and butterfish, and reaffirms 2021–2022 chub mackerel specifications implemented through Amendment 21 (85 FR 47103; August 4, 2020) to the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for

acceptable biological catch (ABC), preventing overfishing, ensuring maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock’s defined overfishing level (OFL).

The regulations implementing the FMP require the Mid-Atlantic Fishery Management Council’s Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council’s SSC. The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. In addition, the regulations require the specification of domestic annual harvest (DAH), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On February 27, 2020 (85 FR 11309), we published a final rule in the **Federal Register** implementing the previously approved 2020 Atlantic mackerel specifications to maintain the 2019 specifications with a modification to the recreational catch deduction and change the river herring and shad catch cap in the Atlantic mackerel fishery. This rule also maintained the previously approved *Illex* squid, longfin squid, and butterfish specifications.

The Council’s SSC met in July 2020 to reevaluate the Atlantic mackerel, squid, and butterfish 2021 specifications based upon the latest information. At that meeting, the SSC concluded that no adjustments to the *Illex* squid, longfin squid, and Atlantic mackerel specifications were warranted. However, the SSC recommended to reduce the butterfish DAH by 72 percent from 2020 based on a recent assessment update that incorporates new data including lower recruitment. Until new specifications are implemented, the existing Atlantic mackerel, longfin squid, *Illex* squid, and butterfish specifications, as described below, will continue pursuant to 50 CFR 648.22(d)(1).

Proposed 2021–2022 Atlantic Mackerel Specifications

The original 2021 Atlantic mackerel ABC recommended by the SSC for Framework 13 (84 FR 58053; October 30, 2019) was based on projections that recognized a strong 2015 year class in the assessment results. At its May 2019 meeting, the SSC considered preliminary results from the 2019 Canadian Atlantic mackerel assessment, which indicated lower than expected recruitment. As a result, the SSC recommended maintaining the more conservative 2020 ABC for 2021. Based on the recommendations of the SSC and the Monitoring Committee, the Council recommended, and this action proposes, maintaining the 2020 mackerel specifications outlined in Table 1. These specifications also maintain the 129 mt river herring and shad catch cap. There is an Atlantic mackerel stock assessment update scheduled for 2022 that will inform future ABC specifications.

TABLE 1—PROPOSED ATLANTIC MACKEREL 2021–2022 SPECIFICATIONS

Specification	2021–2022
OFL	NA
ABC	29,184
Canadian Deduction	10,000
U.S. ABC	19,184
Recreational Allocation	1,270
Commercial Allocation	17,914
Management Uncertainty Buffer (3 percent)	537
Commercial Annual Catch Target	17,377
DAH	17,312

Proposed 2021–2022 Longfin Squid Specifications

This action maintains the 2020 longfin squid ABC of 23,400 mt for 2021–2022. The background for this ABC is discussed in the proposed rule to implement the 2018–2020 squid and butterflyfish specifications (82 FR 58583; December 13, 2017) and is not repeated here. The IOY, DAH, and domestic annual processing (DAP) are calculated by deducting an estimated discard rate (2.0 percent) from the ABC. This results in a 2021 IOY, DAH, and DAP of 22,932 mt (Table 2). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 3). The Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2022 if new information is available.

TABLE 2—2021–2022 LONGFIN SQUID

Specification	Metric tons
OFL	Unknown.
ABC	23,400.
IOY	22,932.
DAH/DAP	22,932.

TABLE 3—2021–2022 LONGFIN QUOTA TRIMESTER ALLOCATIONS

Trimester	Percent	Metric tons
I (Jan–Apr)	43	9,861
II (May–Aug)	17	3,898
III (Sep–Dec)	40	9,173

Proposed 2021–2022 Butterfish Specifications

This action proposes to set the 2021–2022 butterflyfish specifications as outlined in Table 4. The 2020 butterflyfish management track assessment found butterflyfish to be not overfished with no overfishing occurring in 2019, but if the full ABC was caught, projections suggest overfishing would have occurred and the stock would have become overfished. While butterflyfish recruitment is variable, it has been declining since 1999 with historically low recruitment in recent years. The proposed 2021–2022 butterflyfish specifications use the Council’s risk policy at the time and the SSC’s assignment of a 100 percent coefficient of variation to the projected OFL. These specifications propose to maintain the existing butterflyfish mortality cap in the longfin squid fishery of 3,884 mt and the existing allocation of the butterflyfish mortality cap among longfin squid trimesters (Table 5).

TABLE 4—2021–2022 BUTTERFISH SPECIFICATIONS IN METRIC TONS

Specification	2021	2022
OFL	22,053	24,341
ABC	11,993	17,854
ACT	11,393	16,961
Assumed discards	637	637
Total discards	5,043	5,466
Butterfish cap in longfin	3,884	3,884
DAH	6,350	11,495

TABLE 5—PROPOSED 2021 TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY

Trimester	Percent	Metric tons
I (Jan–Apr)	43	1,670

TABLE 5—PROPOSED 2021 TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY—Continued

Trimester	Percent	Metric tons
II (May–Aug)	17	660
III (Sep–Dec)	40	1,554
Total	100	3,844

Proposed 2021–2022 Illex Squid Specifications

Consistent with the Council’s recommendation, NMFS proposes to maintain the 2021 *Illex* squid ABC of 30,000 mt. The Council recommended that the ABC be reduced by the status quo discard rate of 4.52 percent, which results in a 2021 IOY, DAH, and DAP of 24,825 mt (Table 6). The Council will review this decision during its annual specifications process following annual data updates each spring, and may change its recommendations for 2022 if new information is available.

TABLE 6—PROPOSED 2021–2022 *Illex* SQUID SPECIFICATIONS IN METRIC TON

OFL	Unknown
ABC	30,000
IOY	28,644
DAH/DAP	28,644

Proposed Illex Squid In-Season Management Measures

This action proposes to modify the current weekly reporting for commercial dealers after July 15 to a 48-hour reporting requirement for accurate landings monitoring during the fishing season. This action also proposes to modify the closure threshold from 95 percent to 94 percent. Both measures are designed to help avoid quota overages, which occurred in 2018 and 2019.

Reaffirmation of 2021–2022 Atlantic Chub Mackerel Specifications

Amendment 21 to the FMP previously implemented chub mackerel specifications for the 2020–2022 fishing years. The Council reevaluated these specifications at its October 2020 meeting and decided to make no adjustments for the 2021–2022 fishing years. This action reaffirms the previously implemented specifications.

TABLE 7—REAFFIRMED 2021–2022 ATLANTIC CHUB MACKEREL SPECIFICATIONS IN METRIC TONS

Specification	2021–2022
ABC	2,300

TABLE 7—REAFFIRMED 2021–2022 ATLANTIC CHUB MACKEREL SPECIFICATIONS IN METRIC TONS—Continued

Specification	2021–2022
Annual Catch Limit (ACL)	2,262
Annual Catch Target	2,171
Total Allowable Landings	2,041

Classification

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. Business entities affected by this action include vessels that are issued limited access Atlantic mackerel, longfin squid, *Illex* squid, and butterfish permits. Although vessels issued open access incidental catch permits for these species are also potentially affected by this action, because these vessels land only small amounts of Atlantic mackerel, squid, and butterfish and this action would not revise the amount of squid and butterfish that these vessels can land, these entities would not be affected by this proposed rule.

Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity based on standards published in the **Federal Register** (80 FR 81194, December 29, 2015). In 2018, 350 separate vessels held limited access Mackerel, Squid, and Butterfish permits. Approximately 254 entities owned those vessels, and based on current SBA definitions (under \$11 million to be a commercial fishing small business entity), 245 were small business entities. All of the entities that had revenue (223) fell into the commercial fishing category. For those 223 with revenues, their average revenue was \$1.34 million in 2019. The previously approved Atlantic mackerel, *Illex* squid, and longfin squid commercial landing limits

would not be changed by this proposed action. Fishing revenue and, therefore, economic impacts of yearly Mackerel, Squid, and Butterfish specifications depend upon species availability, which may change yearly. This action should not have negative impacts on any participating entities. Mackerel and longfin quotas would be maintained at status quo. *Illex* squid specifications would be maintained at status quo, although the closure threshold would be lowered from 95 percent to 94 percent to avoid quota overages, which have occurred in recent years. The landings that can occur up to the 94 percent closure threshold would still be higher than the 2017–2019 quotas. 2019 landings were only slightly above the landings at the 94 percent threshold even with the 2019 overage. Avoiding quota overages also has the long term benefit of avoiding overfishing. Butterfish quotas would be reduced, but would still allow for increases from how the fishery has operated from 2017–2019.

In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable National Marine Fisheries Service guidance: Disproportionality and profitability. The proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities; all entities affected by this action would be equally affected. Accordingly, there are no distributional economic effects from this action between small and large entities. Proposed measures would not reduce fishing opportunities based on recent squid and butterfish landings, change any entity’s access to these resources, or impose any costs to affected entities. Therefore, this action would not reduce revenues or profit for affected entities compared to recent levels. Based on the above justification, the proposed action is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number: 0648–0229, Greater Atlantic Region Dealer Purchase Reports.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 17, 2021.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.7, add paragraph (f)(1)(ii) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

- * * * * *
- (f) * * *
- (1) * * *

(ii) From July 15 through December 31, dealer or processor reports documenting *Illex* squid landings greater than 10,000 pounds must be received with 48 hours of landing.

* * * * *

■ 3. In § 648.24, revise paragraph (a)(2) to read as follows:

§ 648.24 Fishery closures and accountability measures.

- (a) * * *
- (2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 94 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

* * * * *

[FR Doc. 2021–10679 Filed 5–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210521–0114; RTID 0648–XW035]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2021–2022 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2021, through June 30, 2022. The proposed action would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine would be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan, or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2021–2022 Pacific sardine fishing year is 3,329 metric tons. This proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by June 10, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0045, by the following method:

- **Electronic Submissions:** Submit all public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0045 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619–2052, Taylor.Debevec@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in

the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*

During public meetings each year, the NMFS Southwest Fisheries Science Center (SWFSC) presents the estimated biomass for Pacific sardine to the Pacific Fishery Management Council (Council), including the Council’s CPS Management Team (Team), CPS Advisory Subpanel (Subpanel) and Scientific and Statistical Committee (SSC). The Team, Subpanel, and SSC review the biomass and the status of the fishery, and recommend applicable catch limits and additional management measures. Following Council review and public comment, the Council adopts a biomass estimate and recommends catch limits and any in-season accountability measures to NMFS. NMFS publishes annual specifications in the **Federal Register** to establish these catch limits and management measures for each Pacific sardine fishing year. This rule proposes the Council’s recommended catch limits for the 2021–2022 fishing year, as well as management measures to ensure that harvest does not exceed those limits and the adoption of an OFL and ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine.

Recommended Catch Limits

According to the FMP, the catch limit for the primary directed fishery is determined using the FMP-specified HG formula. This Pacific sardine HG control rule, the primary mechanism for setting the primary directed fishery catch limit, includes a CUTOFF parameter, which has been set as a biomass level of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Since this year’s biomass estimate, 28,276 metric tons (mt), is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2021–2022 fishing

season. This is the seventh consecutive year that the primary directed fishery is closed.

During the 2019–2020 fishing year, the estimated biomass of Pacific sardine dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an overfished determination process. Accordingly, NMFS declared the stock overfished on June 26, 2019, and notified the Council on July 9, 2019. Since then, NMFS has worked with the Council to develop a rebuilding plan for Pacific sardine. At its September 2020 meeting, the Council recommended Amendment 18 to the CPS FMP, which would implement a rebuilding plan for Pacific sardine. NMFS published a Notification of Availability (86 FR 14401) for Amendment 18 to the CPS FMP on March 16, 2021, with a comment period ending on May 17, 2021.

At the Council’s April 2021 meeting, the Council’s SSC reviewed the SWFSC 2021–2022 Pacific sardine stock assessment “Catch-only projection of the Pacific sardine resource in 2021 for U.S. management in 2021–2022.” The SWFSC completes annual assessments for Pacific sardine. The type of assessment alternates between benchmark assessments in one year and updated assessments the following two years. Both types of assessments are based largely on data collected from annual research cruises. However, due to the COVID–19 pandemic, a CPS research cruise was not conducted in 2020. As a result, the SWFSC produced a catch-only projection, based on the 2020 benchmark assessment, to provide a biomass estimate for harvest specifications during the 2021–2022 fishing year.

Although the SSC acknowledged that the SWFSC appropriately conducted the stock assessment in accord with the Council’s Terms of Reference for catch-only projections, the SSC concluded that the assessment was not appropriate for use in management this year. The SSC’s primary concern was the discrepancy between the 2020 estimated fleet catch used in the 2020 benchmark assessment and the actual observed 2020 fleet catch used in the 2021 catch-only assessment. Specifically, the actual observed MexCal fleet catch (*i.e.*, catch from Mexico, Southern California, and Central California) used for the 2021 catch-only projection was significantly higher than the preliminary estimate of the MexCal fleet catch for the same time period used in the 2020 benchmark assessment (33,070 mt vs 11,819 mt), resulting in a catch level for 2020 that was higher than the estimated biomass for 2020. This high level of catch caused

the stock assessment model to make unrealistic assumptions about the stock (e.g., levels of recruitment and fishing mortality rate) that are not expected for a catch-only assessment, as they varied too much from the 2020 benchmark assessment. For example, to reflect such a high catch amount, the model assumed a recruitment level that was nearly triple the previous assessment model estimate of recruitment.

Because of this discrepancy, the SSC recommended using the 2020 benchmark assessment to provide a biomass estimate for harvest specifications during the 2021–2022 fishing year, including the 2020–2021 biomass estimate of 28,276 mt, and the OFL of 5,525 mt. The SSC acknowledged that defaulting to the 2020–2021 stock assessment does not resolve the inconsistencies between the 2020 benchmark assessment and the 2021 catch-only assessment; therefore, the SSC recommended designating the 2020 benchmark assessment as a Category 3 stock assessment, which infers a high amount of uncertainty (*i.e.*, a data-poor assessment) and functionally increases the buffer between the OFL and the ABC to account for the greater uncertainty and ensure overfishing is prevented.

Based on the SSC's recommendation, the Council recommended, and NMFS is proposing for the 2021–2022 fishing year, an OFL of 5,525 mt, an ABC of 3,329 mt, an annual catch limit (ACL) of 3,329 mt, and a prohibition on commercial Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. The Council also recommended an annual catch target (ACT) of 3,000 mt for the 2021–2022 fishing year. For comparison, the ABC/ACL and ACT adopted last year were 4,288 mt and 4,000 mt, respectively. Therefore, although the recommended OFL for this year is the same as last year, the ABC/ACL level has been reduced to account for greater uncertainty in the OFL and an increased level of precaution.

In conjunction with setting an ACT, the Council also recommended inseason and other management measures to ensure harvest opportunity under the ACT throughout the year (see Recommended Management Measures below).

Recommended Management Measures

The proposed annual harvest limits and management measures were developed in the context of the fact that NMFS declared the Pacific sardine stock

overfished in July 2019. Since the biomass remains below the 50,000 mt MSST, the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF but above the MSST).

The following are the proposed management measures and inseason accountability measures for the Pacific sardine 2021–2022 fishing year:

(1) If landings in the live bait fishery reach 1,800 mt, of Pacific sardine, then a 1-mt per-trip limit of sardine would apply to the live bait fishery.

(2) An incidental per-landing limit of 20-percent (by weight) Pacific sardine applies to other CPS primary directed fisheries (e.g., Pacific mackerel).

(3) If the ACT of 3,000 mt is attained, then a 1-mt per-trip limit of Pacific sardine would apply to all CPS fisheries (*i.e.*, 1) and 2) would no longer apply).

(4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

All sources of catch including any EFP set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries, and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator would publish a notification in the **Federal Register** to announce when catch reaches the incidental limits, as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

In previous fishing years, the Quinault Indian Nation has requested, and NMFS has approved, a set-aside for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2021–2022 fishing year, the Quinault Indian Nation has not requested a tribal set-aside, and therefore none is proposed.

At the April 2021 meeting, the Council approved three EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. Those EFPs include a total amount of up to 830 mt of the ACL.

This action must be effective by July 1, 2021; otherwise the fishery will open without any catch limits or restrictions in place. In order to ensure that these harvest specifications are effective in time for the start of the July 1 fishing year, NMFS will solicit public comments on this proposed rule for 15 days rather than the standard 30 days. A 15-day comment period has been the practice since the 2015–2016 fishing year, when the primary directed fishery for sardine was first closed. NMFS received the recommendations from the Council that form the basis for this rule only last month. The subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP. Additionally the Council provided an opportunity for public comment at its April 2021 meeting, as it does every year before adopting the recommended harvest specifications and management measures for the proceeding fishing year.

Classification

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

This proposed rule is exempt from review under Executive Order 12866.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, while still allowing harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2021–2022 annual specifications for Pacific sardine in the U.S. EEZ off the West coast. The small entities that would be affected by the proposed action are the vessels that would be expected to harvest Pacific sardine as part of the West Coast CPS small purse seine fleet if the fishery were open, as well as fishermen targeting other CPS, sardine for live bait, or sardine in the minor directed fishery. In 2014, the last year that a directed fishery for Pacific sardine was allowed, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.); and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. We do not collect or have access to information about affiliation between vessels or affiliation between vessels and processing entities in this fishery, or receipts in Alaska, Hawaii, or international fisheries, so it is possible that some impacted entities may exceed \$11 million in ex-vessel revenue or another size-standard threshold. Based on available data, the average annual west coast revenue per vessel for all west coast vessels, including those described above potentially affected by this rule, was well below the threshold level of \$11 million as of 2020; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner.

Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the primary directed sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt), the HG is zero. Since there is again no directed fishing for the 2021–2022 fishing year, this proposed rule will not change the potential profitability for directly regulated entities compared to the previous six fishing years. Additionally, while the proposed 2021–2022 ACL is slightly lower compared to previous years, it is still expected to account for the various fishery sector needs (*i.e.*, live bait, incidental catch in other CPS fisheries, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in

Alaska or squid in California during times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time. Therefore, as abundance levels and markets fluctuate, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

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

Dated: May 21, 2021.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2021–11161 Filed 5–25–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 100

Wednesday, May 26, 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

Farm Service Agency

[Docket ID FSA–2021–0005]

Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Notification of funding availability.

SUMMARY: The Farm Service Agency (FSA) is issuing this first notice announcing the availability of funds for eligible borrowers with direct loans under the Farm Loan Programs (FLP) and Farm Storage Facility Loan Program (FSFL) as authorized by section 1005 of the American Rescue Plan Act of 2021 (ARPA). A subsequent notice addressing guaranteed loans and remaining loan balances eligible under section 1005 will be published within 120 days of publication of this NOFA. FSA will pay 120 percent of direct loan balances outstanding as of January 1, 2021, for socially disadvantaged farmers and ranchers as that term is defined by section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990.

DATES:

Funding availability: Implementation will begin May 26, 2021

Comment Date: We will consider comments on the Paperwork Reduction Act that we receive by: July 26, 2021.

ADDRESSES: We invite you to submit comments on the information collection request. You may submit comments by any of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID FSA–2021–0005. Follow the online instructions for submitting comments.

- *Mail:* Bruce Mair, Direct Loan Servicing Branch Chief, Farm Loan Programs, Farm Service Agency, USDA, 1400 Independence Ave. SW, Stop 0523, Washington, DC 20250. In your comment, specify the docket ID FSA–2021–0005.

All comments received, including those received by mail, will be posted without change and publicly available on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Bruce Mair; telephone: (202) 720–1645; or by email: bruce.mair@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 1005 of the American Rescue Plan Act of 2021 (ARPA) provides funding and authorization for FSA to pay up to 120 percent of direct and guaranteed loan outstanding balances as of January 1, 2021, for certain loans of socially disadvantaged farmers and ranchers as that term is defined in section 2501(a) of the Food, Agriculture Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). See ARPA section 1005(b)(3). Section 2501(a) defines a socially disadvantaged farmer or rancher as someone who is a member of a socially disadvantaged group, which is further defined as a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. See 7 U.S.C. 2279(a)(5)–(6). Through this notice, FSA is announcing the immediate implementation of section 1005 of ARPA for eligible direct loan FLP and FSFL borrowers who are socially disadvantaged farmers or ranchers, as defined by section 2501(a).

A separate NOFA will be issued specifying the timeframes and requirements for guaranteed loans and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset. All eligible direct loan borrowers are included in this initial announcement except those who no longer have collateral or an active farming operation. These borrowers often have more complicated cases and may not have the same opportunities to invest in their farming operation to manage tax liabilities. FSA expects these cases to account for approximately 5 percent of eligible direct loan borrowers. Procedures for

payments to these borrowers will be addressed in a subsequent NOFA, which will also include eligible guaranteed loan borrowers. For eligible direct loan borrowers who also have guaranteed loans, their guaranteed loans will be handled through the subsequent NOFA.

Definitions

The following definitions apply to this Notice:

Adjustment is a form of debt settlement that reduces the financial obligation to FSA, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

Bankruptcy estate is a legal entity created upon the filing of any case under Title 11 of the United States Code, 11 U.S.C. 101–1532, consisting of the legal and equitable interests in property of a debtor.

CONACT means the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921–2009cc–18).

Cooperative means an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

Corporation means a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Direct Loan means a loan funded and serviced by FSA as the lender.

Eligible direct loan means a debt that had an outstanding balance on January 1, 2021, and is any of the following:

- FLP direct loan issued under subtitles A, B, or C of the CONACT, including Conservation loans, Emergency loans, Farm Ownership loans (including Down Payment loans), Grazing loans, Irrigation and Drainage loans, Operating loans (including Youth loans and Microloans), and Soil and Water loans;

- FLP direct non-program loan and Softwood Timber Loans where the original loan was issued under the CONACT; or
- FSFL loan.

Eligible recipient means an individual or entity that is:

- A borrower or co-borrower on FSA eligible direct loans on January 1, 2021;

all eligible direct loan borrowers are included in this initial announcement except those who no longer have collateral or an active farming operation and whose loan has been previously referred to the Department of Treasury for debt collection for offset; and

- A member of a socially disadvantaged group as reflected on FSA records at the time a payment is made. For entities and married couples, at least one individual personally liable as a borrower or co-borrower for the debt must be a member of a socially disadvantaged group; or

- An estate of a deceased eligible recipient.

Entity means a corporation, partnership, joint operation, cooperative, limited liability company, or trust.

Estate is a legal entity created as a result of a person's death and consists of the property of the deceased. The estate pays any debts owed by the deceased and distributes the balance of the estate's assets to the beneficiaries of the estate.

FLP means Farm Loan Programs, the FSA programs to make, guarantee, and service loans to family farmers authorized under the CONACT and implemented through the FSA regulations in 7 CFR parts 700–774.

FSFL means Farm Storage Facility Loans, the FSA program to make and service loans for farm storage facilities authorized by the CCC Charter Act (15 U.S.C. 714–714p) and the Food, Conservation and Energy Act of 2008 (7 U.S.C. 7971 and 8789) and implemented through the FSA regulations in 7 CFR part 1436.

Guaranteed loan means a loan made pursuant to subtitles A, B, or C of the CONACT and serviced by a lender for which FSA has entered into a Lender's Agreement and for which FSA has issued a loan guarantee. This term also includes guaranteed lines of credit.

Joint operation means an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Limited Liability Company means a business structure combining the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation organized pursuant to the laws of the state in which it will operate a farm.

Offer notice means the letter sent to eligible borrowers that will notify them of the payment amount, obtain direct

deposit payment information and verifying eligible and ineligible loans.

Partnership means an entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Primary borrower means the borrower who was designated as the operator of the farm or ranch when the loan was closed. For formal entities, the primary borrower is the entity while members are co-borrowers. For informal joint operations, at the time of application the applicants designate the individual identified as the primary borrower.

Recapture is the amount that FSA or lenders are entitled to recover from a direct or guaranteed loan borrower in consideration for FSA or the lender writing down a portion of their direct or guaranteed loan debt when the loan was secured by real estate and the real estate increased in value. Recapture also includes the act of collecting shared appreciation.

Socially Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities, as defined by section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). Members of socially disadvantaged groups include, but are not limited to:

- American Indians or Alaskan Natives;
- Asians;
- Blacks or African Americans;
- Native Hawaiians or other Pacific Islanders; and
- Hispanics or Latinos.

The Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation.

Sole Proprietor means a business owned and operated by an individual with no legal distinction between the owner and the business.

Trust means an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Determining Amount of Payments

ARPA section 1005 permits the Secretary of Agriculture to provide payments to a lender directly to pay off an eligible loan, to an eligible recipient, or a combination of both. Payments for eligible direct loans will be equal to 120 percent of the outstanding indebtedness owed on eligible direct loans as of January 1, 2021. Undisbursed balances of eligible direct loans will not count toward the outstanding indebtedness owing as of January 1, 2021.

In order to determine the amount of the payment, FSA will make adjustments for eligible recipients with the following types of cases:

- Where FSA has entered into an adjustment agreement with the borrower, the adjustment agreement will be reversed and the payment to the eligible borrower will be calculated on the full debt as of January 1, 2021, rather than on the lesser amount owing on the adjustment agreement.

- Shared Appreciation Agreement: the recapture amount will be waived.

Initial Notification Process

Eligible recipients do not need to take any action until receipt of a payment offer from FSA. However, eligible recipients may, if necessary, update their demographic information in FSA records by contacting their Local FSA Service Center. Within 45 days of the publication of this NOFA, FSA anticipates sending an offer notice to eligible recipients with eligible direct loans. The offer notice will explain:

- Eligibility based on the current information on record;
- FSA's calculation of payments, including proposed distribution of payments;
- Remaining balances on loans that are not included as eligible direct loans (if any) (for example, Economic Emergency loans or loans disbursed after January 1, 2021);
- Any eligible loans that will be addressed through a subsequent NOFA (that is, guaranteed FLP loans and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset); and
- That borrowers should be aware of potential implications of receipt of direct payments during bankruptcy.

The offer notice will be sent to the primary borrower and eligible recipient(s) and will provide three options:

- (1) Accept the offer and conditions;
- (2) Schedule a meeting to discuss with FSA before making a decision (for example to discuss the loan calculation, if an error is identified); or

(3) Decline the offer.

Only the eligible recipient(s) must sign the document either accepting or declining to initiate the payments.

The eligible recipient(s) must certify the information in the offer notice. Acceptance of the offer indicates concurrence with the payment calculations and the indicated distribution of funds, and verification as eligible recipient(s).

If an offer has not been formally accepted or declined after 30 days, FSA will send a reminder letter and make a phone call or send an email if that contact information is on file. If a response to accept or decline an offer is not received after 60 days from the date of the initial offer, FSA will provide a second reminder notification to those borrowers that a payment will not be processed unless contacted by the eligible recipient. Should FSA establish a final deadline, it will be publicly announced and a final notification will be provided to borrowers at least 30 days in advance of the deadline.

Distributing Payments

FSA will distribute payments as follows:

(1) The amount to pay off the eligible direct loan(s) will be directly applied to such loans by FSA; and

(2) The additional 20 percent will be paid in accordance with the offer notice.

Any payment will be issued electronically as stated in the offer notice. FSA will credit payments as of January 1, 2021, and ensure payments made on accounts after January 1, 2021, are reversed and refunded to customers that have accepted the payment. Refunds will occur at the time the direct loan payoff is being completed. If the loan was paid in full after January 1, 2021, the ARPA payment will be calculated based on the balance outstanding as of January 1, 2021.

Both the payment to FSA to payoff outstanding loans and the additional 20 percent to the borrower will be reported to the Internal Revenue Service (IRS) as income using form IRS-1099 G, in accordance with applicable requirements. Borrowers should consult with a tax professional to discuss any tax implications. ARPA is subject to appeal rights pursuant to 7 CFR parts 11 and 780.

USDA will work with non-governmental organizations (NGO) funded through FSA Cooperative Agreements to provide technical assistance. Technical assistance by USDA and its cooperators will be provided to borrowers free of charge. Borrowers are not required or expected

to pay any fees to access these ARPA benefits.

The USDA makes no representation whether any payment directly to a borrower in a pending bankruptcy case constitutes property of the bankruptcy estate. Borrowers should consult bankruptcy professionals or counsel to discuss the impact of bankruptcy on any payments received under ARPA.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection request associated with ARPA. After the 60-day period ends, the information collection request will be submitted to the Office of Management and Budget (OMB) for a 3-year approval to cover ARPA information collection.

To start the ARPA information collection approval, prior to publishing this document, FSA received emergency approval from OMB for 6 months. The emergency approval covers ARPA information collection activities.

Title: American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA),

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support all ARPA information collection requests to provide payments to the eligible borrowers under section 1005 of ARPA. FSA will provide the loan information, the calculation of payments, and other required information to the borrower to review and to sign the offer to indicate acceptance or rejection of the offer.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: FLP direct and FSFL borrowers.

Estimated Annual Number or Respondents: 24,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 24,000.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden on Respondents: 6,000 hours.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden 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.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As previously stated, ARPA includes provisions for paying up to 120 percent of direct and guaranteed loan balances as of January 1, 2021, for FSA borrowers who belong to socially disadvantaged groups as defined in section 2501(a) of the Food, Agriculture Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). The limited discretionary aspects of ARPA do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the FSA Categorical Exclusions specified in 7 CFR 799.31(b)(1)(xiii) (partial or complete release of loan collateral) and 799.31(b)(1)(xvii) (restructuring of loans and writing down of debt).

No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of ARPA and the participation in ARPA do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or

environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this document applies is 10.136.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2021-11155 Filed 5-24-21; 8:45 am]

BILLING CODE 3410-05-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via the web platform Webex on, June 10, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to discuss voting rights topics of concern in the state.

DATES: The meetings will be held on: <https://civilrights.webex.com/civilrights/j.php?MTID=mbfc50dadd21bfd4a04a9f0961cb64a81>.

- Thursday, June 10, 2021, at 12:00 p.m. Central Time, 800-360-9505 USA Toll Free, Access code: 199 818 6105.

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or (202) 499-4066.

SUPPLEMENTARY INFORMATION: Members of the public may 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 David Barreras at dbarreras@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.facadata.gov under the Commission on Civil Rights, Kansas 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
- II. Chair's Comments
- III. Committee Discussion
- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Dated: May 21, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-11143 Filed 5-25-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Business and Professional Classification Report

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Business and Professional Classification Report.

OMB Control Number: 0607-0189.

Form Number(s): SQ-CLASS.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 58,000.

Average Hours per Response: 13 minutes.

Burden Hours: 12,567.

Needs and Uses: The U.S. Census Bureau requests continued clearance of

the Business and Professional Classification Report (SQ-CLASS). The primary purpose of SQ-CLASS Report is to meet the ongoing sample needs of the Census Bureau's various surveys of the retail trade, wholesale trade, and services portions of the economy (our current business surveys) as defined by the North American Industry Classification System (NAICS). The data collected by the SQ-CLASS report are used to update the samples in our current business surveys to reflect newly opened establishments. Additionally, establishments in the five-year economic census will receive data collection instruments specifically tailored to their industry based on the classification information obtained by the SQ-CLASS report.

Additionally, establishments in the five-year economic census will receive data collection instruments specifically tailored to their industry based on the classification information obtained by the SQ-CLASS report. Businesses in Support Activities for Crop Production (NAICS 1151) and Support Activities for Animal Production (NAICS 1152) will be added to the scope and collection of the 2022 Economic Census in order to fill a recognized measurement gap. To ensure that businesses are properly classified before the 2022 Economic Census collection, the scope of the SQ-CLASS is being expanded to include businesses in the Agriculture Sector (NAICS 11) that are not fully classified. This change adds approximately 6,000 cases to the SQ-CLASS collection in Fiscal Year 2022 and a small number of additional cases in succeeding years, with minor modifications to the SQ-CLASS instrument and instructions. In the **Federal Register** notice dated March 8, 2021 located in Vol. 86, No. 43, on page 13,280, this change to our sampling structure was not mentioned.

To keep current with rapid changes in the marketplace caused by new businesses (a.k.a. births) the Census Bureau samples newly assigned Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS). Each EIN can only be selected once for the SQ-CLASS report. EINs selected for the SQ-CLASS sample are asked to provide data about the establishment(s) associated with the new EIN including a more reliable measure of size, consisting of sales in two recent months, company affiliation information, a new or more detailed industry classification code, and other key information needed to maintain proper coverage of the business universe on the Business Register (BR) for the current business surveys.

Based on information collected on the SQ-CLASS form, EINs meeting the criteria for inclusion in the Census Bureau's current business surveys are eligible for a second phase of sampling. The retail, wholesale, and services EINs selected in this second sampling are asked to report annually on the annual retail, wholesale, and service surveys. A subsample of the retail and wholesale EINs are also asked to report monthly on the monthly retail and wholesale surveys. Similarly, a subsample of the service EINs are asked to report in the quarterly services survey.

The Economic Census and the current business surveys represent the primary source of facts about the structure and function of the U.S. economy, providing essential information to government and the business community in making sound decisions. This information helps build the foundation for the calculation of Gross Domestic Product (GDP) and other economic indicators. Crucial to its success are the accuracy and reliability of the BR data, which provides the Economic Census and current business surveys with their establishment lists. Critical to the quality of information housed in the BR is that each of the statistical units has an accurate industry classification, measure of size, activity status, and physical address assigned to it. The vital information obtained from the SQ-CLASS report is fed back to the BR to represent changes in industries and confirm coverage between the years of the Economic Census.

We are not proposing any major changes to the collection. Minimal changes are being made to the economic activity descriptions in the primary business activity question on the SQ-CLASS report. These changes include providing additional examples of activities included in a specific economic sector. Respondents will continue to choose the economic sector of their business and then select their type of business from a list of business activities based on their response to the question about their economic sector. If the respondent does not see their business activity listed, then they will provide a brief description of their business activity. This is the same methodology that the Census Bureau uses in the Economic Census to assign industry classification.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C.

Sections 131, 182 and 193.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the

Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0607-0189.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-11102 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE-185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis, by email to christopher.stein@bea.gov or PRAComments@doc.gov. Please reference OMB Control Number 0608-0065 in the subject line of your comments. Do not submit Confidential

Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis; (301) 278-9189; or via email at christopher.stein@bea.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (Form BE-185) is a survey that collects data from U.S. persons who engage in covered financial services transactions. A U.S. person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), resident in the United States or subject to the jurisdiction of the United States. A U.S. person must report if they had combined sales of covered financial services to foreign persons that exceeded \$20 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year, or if they had combined purchases of covered financial services from foreign persons that exceeded \$15 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year.

The data are needed to monitor U.S. trade in financial services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in financial services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

The Bureau of Economic Analysis (BEA) is proposing two modifications to the existing transaction categories covered by the BE-185 survey and a change to the survey due date, beginning with reporting for first quarter 2022. The proposed modifications to the BE-185 survey would allow BEA to increase the quality and usefulness of BEA's statistics on trade in financial services.

BEA proposes to add "brokerage services related to debt transactions" as a separate transaction category. The

change will result in three categories for brokerage services, rather than the current two categories on the survey. The three categories collected on the survey will be brokerage services related to equity transactions (code 1), brokerage services related to debt transactions (code 1.1), and brokerage services related to other transactions (code 2). In reviewing brokerage transactions reported on the survey over the last several years, BEA has determined that most survey respondents can provide brokerage related to debt securities because this information is readily available in their records. BEA will provide updated instructions to ensure accurate reporting of brokerage transactions.

BEA proposes to break "financial advisory and custody services" into two separate transaction categories. The change will result in two separate transaction categories of financial advisory services (code 7), and financial custody services (code 7.1). In reviewing transactions reported in the combined "financial advisory and custody services" category over the last several years, BEA has determined that these transactions are distinctly different in nature and collecting them in a single transaction category may be confusing to survey respondents. BEA has also determined that most respondents have the ability to report details for these activities separately because this information is readily available in their records. BEA will provide updated instructions to ensure accurate reporting.

BEA also proposes to change the due date of the survey to 30 days after the close of each quarter from 45 days for the three quarters that are not the final fiscal quarter of the year. For the close of the final fiscal quarter of the year, reports would be due 45 days after the close of the quarter instead of 90 days. Shortening the reporting timeline will allow BEA to produce more accurate and complete trade in services statistics in preliminary estimates of the ITAs, which is critical information for policymakers' timely decisions on international trade policy. The earlier due date will allow BEA to use more reported data for preliminary statistics, improving the accuracy of both the aggregates and the country detail, and reducing revisions in subsequent statistical releases. In addition, the proposed reporting deadlines are also consistent with the reporting deadline of BEA's quarterly direct investment surveys.

BEA estimates there will be a small increase in the total burden for the survey due to the change in transaction

detail required, but the average number of burden hours per response will continue to average 10 hours for companies filing country detail. BEA estimates that approximately 100 survey respondents will experience a burden increase of less than 10 percent. Although the estimated change is measurable, only a small portion of the total reporters are affected. BEA believes these data are readily available in their accounting records. When total burden for completing the survey is averaged across all reporters, factoring in the additional time BEA believes these reporters will spend complying with the survey, burden for completing the survey continues to average 10 hours per response.

BEA estimates there will be no change in burden hours per response as a result of the proposed change in survey due dates. While survey respondents will have to file earlier, the burden for the survey is unchanged because the same information, other than the two changes described above, will be required on the survey as in the past. The language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

II. Method of Collection

BEA contacts potential respondents by mail at the end of each quarter. Respondents would be required to file the completed BE-185 forms within 30 days after the end of each fiscal quarter that is not the final fiscal quarter of the year and within 45 days after the close of the final fiscal quarter of the year. Reports would be required from each U.S. person that had combined sales of covered financial services to foreign persons that exceeded \$20 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year, or that had combined purchases of covered financial services from foreign persons that exceeded \$15 million for the previous fiscal year, or that are expected to exceed that amount during the current fiscal year. Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

BEA offers its electronic filing option, the eFile system, for use in reporting on Form BE-185. For more information about eFile, go to www.bea.gov/efile. In addition, BEA posts all its survey forms and reporting instructions on its website, www.bea.gov/ssb. These may be downloaded, completed, printed, and submitted via fax or mail.

III. Data

OMB Control Number: 0608-0065.

Form Number(s): BE-185.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

2,860 annually (715 filed each quarter; 580 reporting mandatory data, and 135 that would file exemption claims or voluntary responses).

Estimated Time per Response: 10 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. Hours may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 24,140.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94-472, 22 U.S.C. 3101-3108, as amended), and Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-11101 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-03-2021]

Foreign-Trade Zone (FTZ) 38— Charleston, South Carolina; Authorization of Production Activity; BMW Manufacturing Company, LLC (Passenger Motor Vehicles), Spartanburg, South Carolina

On January 21, 2021, BMW Manufacturing Company, LLC (BMW MC) submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 38A, in Spartanburg, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 7694-7695, February 1, 2021). On May 21, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: May 21, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021-11135 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 210325-0066]

RIN 0694-XC076

Reporting for Calendar Year 2020 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually to Commerce information on offsets transactions completed in performance of existing offsets commitments for which offsets

credit of \$250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2020 and must be submitted to Commerce no later than June 15, 2021.

ADDRESSES: Submit reports in both hard copy and electronically. Address the hard copy to "Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security (BIS), Room 3878, Washington, DC 20230". Submit electronic copies to OffsetReport@bis.doc.gov.

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202-482-3755; fax: 202-482-5650; email: ronald.demarines@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 723(a)(1) of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4568 (2021)) requires the President to submit an annual report to Congress on the impact of offsets on the U.S. defense industrial base. Section 723(a)(2) directs the Secretary of Commerce (Secretary) to prepare the President's report and to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations (Offsets Regulations). Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR 120-130). Offsets are also applicable to certain items controlled on the Commerce Control list (CCL) and with an Export Control Classification Number (ECCN) including the numeral "6" as its third character. The CCL is found in Supplement No. 1 to part 774 of the Export Administration Regulations.

An example of an offset is as follows: A company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true

price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft. As described in the Offsets Regulations, U.S. firms are required to report information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of \$250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA (50 U.S.C. 4568 (2021)). As provided by section 723(c) of the DPA, BIS will not publicly disclose individual firm information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

To enable BIS to prepare the next annual offset report reflecting calendar year 2020 data, affected U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2020 to BIS no later than June 15, 2021.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021-11068 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-836]

Glycine From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2020-2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 26, 2021.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on glycine from the People's Republic of China (China) covering the period of review March 1, 2020, through February 28, 2021, based

on the timely withdrawal of the request for review.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5760.

Background

On March 1, 2021, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on glycine from China covering the period of review March 1, 2020, through February 28, 2021.¹ On March 31, 2021, GEO Specialty Chemicals, Inc. (GEO), a domestic producer of glycine, filed a timely request for review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b).² Pursuant to this request, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated this administrative review with respect to one company, Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong), on May 5, 2021.³ On May 14, 2021, GEO withdrew its request for this administrative review with respect to Baoding Mantong.⁴

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. GEO timely submitted a withdrawal of its review request within the 90-day deadline. No other party requested this administrative review. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of glycine from China. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 86 FR 11921, 11923 (March 1, 2021).

² See GEO's Letter, "Request for Administrative Review" dated March 31, 2021.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 23925, 23928 (May 5, 2021).

⁴ See Letter from GEO, "Withdrawal of Request for Administrative Review," dated May 14, 2021.

at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 35 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers, whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 20, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-11134 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain pasta (pasta) from Italy was sold in the United States at less than normal value during the period of review (POR) July 1, 2018, through June 30, 2019.

Additionally, Commerce determines that Pasta Berruto S.p.A. (Pasta Berruto) had no shipments during the POR.

DATES: Applicable May 26, 2021.

FOR FURTHER INFORMATION CONTACT:

Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1468.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 2020, Commerce published the *Preliminary Results*.¹ On January 26, 2021, Commerce received case briefs on behalf of La Molisana S.p.A. (La Molisana), Valdigrano di Flavio Pagani S.r.L., and Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively Ghigi/Zara). On February 5, 2021, Riviana Foods and Treehouse Foods LLC., collectively domestic producers of pasta, submitted a rebuttal brief for each of the submitted case briefs.

Commerce extended the deadline for the final results by 59 days on March 3, 2021.² The deadline for the final results of this review is now May 21, 2021. 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 products covered by this order are certain pasta from Italy. For a full description of the scope, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and

to which we responded in the Issues and Decision Memorandum is attached to this notice 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 <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/index.html/>.

Determination of No Shipments

As noted in the *Preliminary Results*, we received a no-shipment claim from Pasta Berruto. In the *Preliminary Results*, we preliminarily determined that Pasta Berruto had no shipments during the POR. We received no comments from interested parties with respect to this claim. Therefore, we continue to find that Pasta Berruto had no shipments during the POR.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we relied on revised cost of production data when calculating the weighted-average dumping margin for La Molisana.⁴

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available (FA) in calculating an all-others rate. Accordingly, Commerce's practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the annual review, excluding rates that are zero, *de minimis*, or based entirely on FA.⁵ For

these final results of review, we calculated a weighted-average dumping margin for La Molisana that is above *de minimis* and not based entirely on FA. Therefore, consistent with our practice, we have assigned the companies not selected for individual examination the weighted-average dumping margin calculated for La Molisana.

Final Results of the Review

Commerce determines that the following weighted-average dumping margin exists for the period July 1, 2018, through June 30, 2019:

Exporter or producer	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A., Pasta Zara S.p.A	91.76
La Molisana S.p.A	15.72
Review-Specific Average Rate Applicable to the Following Companies:	
F. Divella S.p.A	15.72
Liguori Pastificio dal 1820 S.p.A	15.72
Newlat Food S.p.A	15.72
Pastificio Di Martino Gaetano e Flli S.p.A	15.72
Pastificio Fratelli DeLuca S.r.l	15.72
Pastificio Rey S.r.l	15.72
Rummo S.p.A	15.72
Tesa S.r.l	15.72
Valdigrano di Flavio Pagani S.r.L	15.72

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

Commerce has calculated importer-specific antidumping duty assessment rates. For La Molisana, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

¹ See *Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 74676 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Certain Pasta from Italy: Extension of Time Limit Final Results of Antidumping Duty Administrative Review; 2018/2019," dated March 3, 2021.

³ See Memorandum, "Certain Pasta from Italy: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2018-2019," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ *Id.* at Comment 2.

⁵ See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United*

For entries of subject merchandise during the POR produced by La Molisana where the producer did not know its merchandise was destined for the United States, or for entries associated with Pasta Berruto, who had no shipments during the POR, we will instruct CBP to liquidate unreviewed suspended entries, consistent with the reseller policy, at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁶

The assessment rate for antidumping duties for Ghigi/Zara, as well as for each of the companies not selected for individual examination, will be equal to the weighted-average dumping margin identified above in the Final Results of Review.

Consistent with its recent notice,⁷ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies identified above in the Final Results of Review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash

deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the section 129 determination.⁸

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: May 20, 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

⁸ See *Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007).

III. Scope of the Order

IV. Changes Since the *Preliminary Results*

V. Discussion of the Issues

Comment 1: Protein Content

Comment 2: Revisions to La Molisana's Cost Reporting

Comment 3: Model Match for La Molisana's Tri-Color Pasta

Comment 4: Alternative Comparison Methodology

Comment 5: Price of La Molisana's Private Label Pasta

Comment 6: Application of Total AFA to Ghigi/Zara

Comment 7: Collapsing Ghigi/Zara

VI. Recommendation

[FR Doc. 2021–11133 Filed 5–25–21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of an Opportunity To Apply for Membership on the United States Investment Advisory Council; Correction

AGENCY: SelectUSA, United States Investment Advisory Council, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The International Trade Administration, Department of Commerce published a document in the **Federal Register** on May 17, 2021 concerning the notice of an opportunity to apply for membership on the Investment Advisory Council. The document contained an incorrect number of members allowed to serve on the IAC.

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:

Correction

In the **Federal Register** of May 17, 2021, in FR Doc. 2021–10358, on page 26697, in the first column, third paragraph under **SUPPLEMENTARY INFORMATION** correct the caption to read: The IAC shall consist of no more than

⁶ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁷ See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

forty (40) members appointed by the Secretary.

William Burwell,

Deputy Executive Director, SelectUSA.

[FR Doc. 2021-11132 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB122]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting via webinar.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, June 2, 2021 at 9 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/7279047766408535051>.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will meet to continue development of Framework 9, an action to implement a rebuilding plan for Atlantic herring that was declared overfished, and potentially adjust herring accountability measures to improve flexibility and optimize yield in the herring fishery. The Panel will also continue development of Framework 7, an action to protect spawning Atlantic herring on Georges Bank. They will discuss 2020-2024 herring research priority recommendations for Council consideration. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come

before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

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

Dated: May 20, 2021.

Diane M. DeJames-Daly,

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

[FR Doc. 2021-10979 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-22-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2003-0033; FRL-10023-63-OAR]

Proposed Information Collection Request; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR® Product Labeling (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "EPA's ENERGY STAR Product Labeling" (EPA ICR No. 2078.07, OMB Control No. 2060-0528), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it

displays a currently valid OMB control number.

DATES: Comments must be submitted on or before July 26, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2003-0033, online using www.regulation.gov (our preferred method), by email to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

James Kwon, Climate Protection Partnerships Division, Office of Air and Radiation, Mailcode 6202A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-8538; fax number: 202-343-2200 email address: kwon.james@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of

responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements.

Program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and program requirements. Retail partners commit to selling, marketing and promoting ENERGY STAR certified products. Product brand owner partners, who are usually the manufacturer of the products, commit to having participating products certified to meet specified energy performance criteria based on a standard test method and EPA's third-party certification requirements. These requirements for ENERGY STAR product certification also include provisions for verifying the performance of certified products through verification testing. The program's emphasis on testing and third-party product review ensures that consumers can trust ENERGY STAR certified products to deliver the energy savings promised by the label. In rare circumstances where product brand licensee's wish to partner with EPA, the Agency establishes the appropriate contacts and relationships for the brand owner and licensee through a joint brand owner and licensee template that both parties are required to sign.

As part of the Agency's contribution to the overall success of the program, EPA facilitates the sale of certified products by providing consumers with easy-to-use information about the products. To perform this function, EPA must obtain data on certified products. Prior to EPA adopting a third-party certification process, product brand owners were required to submit individual product information directly to the Agency. Since 2011, product information has been recorded by Certification Bodies and shared with

EPA using XML-based web services that validate and save the information in EPA's database. EPA believes the improved process of submission has reduced the burden time for Partners and the Agency by taking advantage of the infrastructure in place for certifying products. With the automated process of obtaining certified product data, certified model data is automatically updated daily on the ENERGY STAR website. To ensure that products are certified properly, the certification process also includes requirements for Certification Bodies to report to EPA products that were reviewed, but not eligible for certification. To ensure continued product performance after initial certification, EPA requires Certification Bodies to conduct post-market verification testing of a sampling of ENERGY STAR certified products. Certification Bodies are required to share information with EPA on products subjected to this post-market testing twice a year and to immediately report any certified products that no longer meet the program requirements. This process allows EPA to monitor the ongoing performance of products and take necessary steps to maintain consumer confidence in the ENERGY STAR label and protect the investment of partners.

In order to monitor progress and support the best allocation of resources, EPA also asks manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, many manufacturers are given the option of arranging for shipment data to be sent to EPA via a third party to ensure confidentiality. In using any shipment data received directly from a partner, EPA only shares aggregate information from multiple partners so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

Form Numbers: 5900-252, 5900-251, 5900-33, 5900-253, 5900-168, 5900-206, 5900-207, 5900-28, 5900-208, 5900-210, 5900-228, 5900-234, 5900-229, 5900-235, 5900-47, 5900-349, 5900-350, 5900-351, 5900-348, 5900-35, 5900-36, 5900-37, 5900-38, 5900-39, 5900-41, 5900-42, 5900-43, 5900-44, 5900-48, 5900-49, 5900-50, 5900-51, 5900-53, 5900-54, 5900-55, 5900-56, 5900-57, 5900-58, 5900-230, 5900-224, 5900-227, 5900-166, 5900-165, 5900-164, 5900-226, 5900-163, 5900-34, 5900-216, 5900-217, 5900-218, 5900-388, 5900-254, 5900-255, 5900-

415, 5900-416, 5900-417, 5900-438, 5900-439, 5900-440, 5900-501.

Respondents/affected entities: Respondents for this information collection request include Partners in ENERGY STAR.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 2,732.

Frequency of response: Initially/one-time, on occasion, semi-annually, and annually.

Estimated total annual hour burden: 40,391 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Estimated total annual cost: \$2,531,810 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in the estimates: The burden estimates presented in this notice are from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval, in the next **Federal Register** notice to be issued for this renewal.

Carolyn Snyder,

Director, Climate Protection Partnerships Division.

[FR Doc. 2021-11071 Filed 5-25-21; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before July 26, 2021.

ADDRESSES: You may submit comments by any of the following methods—please use only one method:

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

instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Rachel See, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages may be sent by fax machine to (202) 663-4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).

Instructions: All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide. However, the EEOC reserves the right to refrain from posting inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Although copies of comments received are usually also available for review at the Commission's library, given the EEOC's current 100% telework status due to the Coronavirus Disease 2019 (COVID-19) public health emergency, the Commission's library is closed until further notice. Once the Commission's library is re-opened, copies of comments received in response to this notice will be made available for viewing by appointment only at 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, at (202) 921-2665 or kathleen.oram@eoc.gov, or Erin Norris, Senior Attorney, at (980) 296-1286 or erin.norris@eoc.gov. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, national origin,

disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. The EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602. These regulations do not require the creation of any particular records but generally require employers and labor organizations to preserve any personnel and employment records they make or keep for a period of one year or two years, and possibly longer if a charge of discrimination is filed.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the 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 the use of appropriate, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The EEOC seeks an extension without change of OMB's clearance under the PRA of the recordkeeping requirements in 29 CFR part 1602.

Overview of Current Information Collection

Collection Title: Recordkeeping Under Title VII, the ADA, and GINA.

OMB Number: 3046-0040.

Description of Affected Public: Employers and labor organizations subject to Title VII.

Number of Respondents: 989,379.

Number of Reports Submitted: 0.

Estimated Burden Hours: 162,223.

Cost to Respondents: \$0.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), section 107(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff-6(a), direct the Commission to establish regulations pursuant to which entities subject to those Acts shall make

and preserve certain records to assist the EEOC in ensuring compliance with the Acts' prohibitions on employment discrimination. Accordingly, the EEOC issued regulations setting out recordkeeping requirements for private employers (29 CFR 1602.14); employers, labor organizations, and joint labor-management committees that control apprenticeship programs (29 CFR 1602.21(b)); labor organizations (29 CFR 1602.28(a)); state and local governments (29 CFR 1602.31); elementary and secondary school systems or districts (29 CFR 1602.40); and institutions of higher education (29 CFR 1602.49(a)). Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII, which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

Burden Statement: The estimated number of respondents subject to this recordkeeping requirement is 989,379 entities, which combines estimates from private employment,¹ the public sector,² colleges and universities,³ apprenticeship programs,⁴ and referral unions.⁵ An entity subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records, records relating to apprenticeship, or union membership or referral records made or kept by that entity for one year (private employers and referral unions) or two years (public sector, colleges and universities,

¹ Source of original data: 2017 Economic Census. (<https://www.census.gov/content/census/en/data/datasets/2017/econ/susb/2017-susb.html>). Local Downloadable CSV data. Select U.S. & states, 6 digit NAICS. The original number of employers was adjusted to only include those with 15 or more employees.

² Source of original data: 2017 Census of Governments: Employment. Individual Government Data File (<https://www.census.gov/data/tables/2017/econ/apes/annual-apes.html>), Local Downloadable Data zip file "Individual Unit Files". The original number of government entities was adjusted to only include those with 15 or more employees.

³ Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2017. Postsecondary Institutions and Cost of Attendance in 2017-18; Degrees and Other Awards Conferred: 2016-17; and 12-Month Enrollment: 2016-17: First Look (Provisional Data). See Table 1, "Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2017-2018" (<https://nces.ed.gov/pubSearch/pubsinfo.asp?pubid=2018060REV>).

⁴ Source: U.S. Department of Labor. Registered Apprenticeship National Results Fiscal Year 2020. Number of active apprenticeship programs in 2020 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>).

⁵ EEO-3 Reports filed by referral unions in 2018 with EEOC.

apprenticeship programs), and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one or two years. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that an entity has already made or kept in the normal course of its business operations. Thus, existing employers and labor organizations bear no burden under this analysis, because their systems for retaining these types of records are already in place. Newly formed entities may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by new employers or labor organizations to familiarize themselves with Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using projected business formation estimates from the U.S. Census Bureau for 2020 and the number of new apprenticeship programs established in 2020 provided by the Department of Labor, we estimate that there are 324,446 entities that would incur this start-up burden.⁶ Assuming a 30-minute burden per entity, the total annual hour burden is 162,223 hours (.5 hour × 324,446 new entities = 162,223 hours).

For the Commission
Dated: May 20, 2021.

Charlotte A. Burrows,
Chair.

[FR Doc. 2021-11072 Filed 5-25-21; 8:45 am]

BILLING CODE 6570-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX; FRS 28762]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

⁶ Sources: Business Formation Statistics from the U.S. Census Bureau (<https://www.census.gov/econ/bfs/index.html>). Total projected business formation statistics (series BF_PBF4Q) for 2020, across all industries, for the US, not seasonally adjusted.; Department of Labor, New Apprenticeship programs for 2020 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>).

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 26, 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-XXXX.

Title: 47 CFR Section 90.372, Dedicated Short-Range Communications (DSRC) Notification Requirement.

Form No.: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents and Responses: 125 respondents; 125 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement; On occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316.

Total Annual Burden: 250 hours.

Total Annual Cost: \$62,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as a new collection after this 60-day comment period to obtain the full three-year clearance.

On November 20, 2020, the Federal Communications Commission released a First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification, Use of the 5.850-5.925 GHz Band, ET Docket No. 19-138. Among other things, the Commission repurposed 45 megahertz of the 5.850-5.925 GHz band (the 5.9 GHz band), specifically the spectrum from 5.850-5.895 GHz, to allow for the expansion of unlicensed operations into the sub-band. At the same time, the Commission recognized that the 5.9 GHz band plays an important role in supporting intelligent transportation system (ITS) operations, and therefore continued to dedicate 30 megahertz of the 5.9 GHz band, specifically the sub-band from 5.895-5.925 GHz, for use by the ITS radio service. In addition, to promote the most efficient and effective use of the remaining ITS spectrum, the Commission will require ITS operations in the 5.895-5.925 GHz sub-band to transition from the current technology, Dedicated Short-Range Communications (DSRC), to the emerging Cellular Vehicle-to-Everything (C-V2X)-based technology by the end of a transition period to be decided following action on the Further Notice.

47 CFR New Section 90.372 requires DSRC licensees to notify the Commission that they have ceased operations in the 5.850-5.895 GHz sub-band. Below is section 90.372 as adopted in the First Report and Order.

§ 90.372 DSRCs Notification Requirement

(a) DSRCs licensees authorized pursuant to 90.370(b) must notify the Commission that as of the transition deadline of July 5, 2022, they have

ceased operating in the 5.850–5.895 GHz portion of the band. This notification must be filed via ULS within 15 days of the expiration of the transition deadline.

(b) Continued operation in the 5.850–5.895 GHz portion of the band after the transition deadline, will result in automatic termination of that licensee's authorization without specific Commission action.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–11064 Filed 5–25–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 201360.

Agreement Name: CMA CGM/COSCO Shipping Vessel Sharing Agreement—Central America & Caribbean/U.S. Gulf.

Parties: CMA CGM S.A. and COSCO Shipping Lines Co. Ltd.

Synopsis: The Agreement authorizes CMA CGM and COSCO to cooperate on a liner service in the trade between Honduras, Guatemala, Colombia, Jamaica, and the U.S. Gulf Coast.

Proposed Effective Date: 5/14/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/43502>.

Agreement No.: 201103–016.

Agreement Name: Memorandum Agreement of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs.

Parties: Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union.

Synopsis: The amendment revises the divisor for the man-hour base assessment rate in the agreement, and also accordingly revises various figures set forth in Appendix 1.

Proposed Effective Date: 5/17/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10164>.

Dated: May 21, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–11141 Filed 5–25–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities (FR F; OMB No. 7100–0331).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection:

Report title: Recordkeeping Requirements Associated with Limitations on Interbank Liabilities.

Agency form number: FR F.

OMB control number: 7100–0331.

Frequency: On occasion.

Respondents: Depository institutions insured by the Federal Deposit Insurance Corporation (FDIC).

Estimated number of respondents: Creation: 7; maintenance: 5,059.

Estimated average hours per response: Creation: 7; maintenance: 1.

Estimated annual burden hours:

Creation: 49; maintenance: 5,059.

General description of report: The Board's Regulation F—Limitations on Interbank Liabilities—establishes limits on depository institutions' credit exposure to individual correspondents in order to mitigate the risk that the failure of a correspondent would pose to an insured depository institution.¹ Section 206.3 of Regulation F (12 CFR 206.3) requires insured depository institutions to establish and maintain policies and procedures designed to prevent excessive exposure to correspondents. This regulation applies to all depository institutions insured by the FDIC.

Legal authorization and confidentiality: The Regulation F recordkeeping requirements are authorized by section 23 of the Federal Reserve Act, as added by section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991,² which requires the Board to prescribe standards to limit risks posed by exposure of insured depository institutions to other depository institutions. The Regulation F recordkeeping requirements are mandatory.

The Board does not collect any information under Regulation F, so no issue of confidentiality normally arises. However, in the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the Freedom of Information Act (FOIA), which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process.³ Additionally, to the extent that such information obtained by the Board constitutes nonpublic commercial or financial information, which is both customarily

¹ Correspondent means a U.S. depository institution or a foreign bank to which a bank has exposure but does not include a commonly controlled correspondent. 12 CFR 206.2(c).

² 12 U.S.C. 371b–2.

³ 5 U.S.C. 552(b)(8).

and actually treated as private by the financial institution, the financial institution may request confidential treatment pursuant to exemption 4 of the FOIA.⁴

Current actions: On February 2, 2021, the Board published an initial notice in the **Federal Register** (86 FR 8010) requesting public comment for 60 days on the extension, without revision, of the FR F. The comment period for this notice expired on April 5, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision, of the FR F as originally proposed.

Board of Governors of the Federal Reserve System, May 21, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11153 Filed 5-25-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Supervisory and Regulatory Survey (FR 3052; OMB No. 7100-0322).

DATES: Comments must be submitted on or before July 26, 2021.

ADDRESSES: You may submit comments, identified by FR 3052, by any of the following methods:

- **Agency Website:** <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- **Email:** regs.comments@federalreserve.gov. Include the OMB number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable

information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at <https://www.reginfo.gov/public/do/PRAMain>, if approved. These documents will also be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, Without Revision, the Following Information Collection:

Report title: Supervisory and Regulatory Survey.

Agency form number: FR 3052.

OMB control number: 7100-0322.

Frequency: On occasion.

Respondents: May include bank holding companies (BHCs), state member banks (SMBs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), U.S. branches and agencies of foreign banking organizations (FBOs), Edge Act and agreement corporations, nonbank financial companies that the Financial Stability Oversight Council (FSOC) has determined should be supervised by the Board, and the combined domestic operations of FBOs.

Estimated number of respondents: 5,000.

Estimated average hours per response: 0.5.

Estimated annual burden hours: 60,000.

General description of report: The FR 3052 collects information from financial institutions specifically tailored to the Federal Reserve's supervisory, regulatory, and operational responsibilities. The Board utilizes the survey process, as needed, to collect information on specific issues that affect its decision making. The principal value of the FR 3052 is the flexibility it provides the Federal Reserve to respond quickly to the need for data due to unanticipated economic, financial, supervisory, or regulatory

⁴ 5 U.S.C. 552(b)(4).

developments. The Board cannot predict what specific information will be needed, but such needs are generally very time sensitive. Because the relevant questions may change with each survey, there is no fixed reporting form. Past surveys have collected information related to energy lending exposure, cloud-based data exchange services, regulatory capital, Comprehensive Capital Analysis and Review, operational risk loss event history, transactions by government securities dealers, and small debit card issuers.

Written qualitative questions or questionnaires may include categorical questions, yes-no questions, ordinal questions, and open-ended questions. Written quantitative surveys may include dollar amounts, percentages, numbers of items, interest rates, and other such information. Institutions might also be asked to provide copies of existing documents (for example, pertaining to practices and performances for a particular business activity). Before conducting a survey, the Board reviews any information to be collected to determine if the information is available by other means.

Legal authorization and confidentiality: The FR 3052 is authorized by a number of statutes authorizing the Board to require reports of condition from institutions subject to its supervision. These include section 9 of the Federal Reserve Act (FRA),¹ section 5 of the Bank Holding Company Act,² section 10 of the Home Owners' Loan Act,³ section 7 of the International Banking Act (IBA),⁴ section 8 of the IBA,⁵ sections 25 and 25A of the FRA,⁶ and section 161 of the Dodd-Frank Wall Street Reform and Consumer Protection

¹ 12 U.S.C. 324 (requiring state member banks to make reports of condition "in such form and [containing] such information as the Board of Governors of the Federal Reserve System may require").

² 12 U.S.C. 1844(c)(1)(A) (authorizing the Board to require a bank holding company and any subsidiary thereof to submit reports regarding financial condition and compliance).

³ 12 U.S.C. 1467a(b)(2) (authorizing the Board to require a savings and loan holding company and any subsidiary thereof to submit reports containing such information concerning the operation of the company or its subsidiaries as the Board may require).

⁴ 12 U.S.C. 3105(c)(2) (subjecting each branch or agency of a foreign bank to the provisions of 12 U.S.C. 324 requiring reports of financial condition as if it were a state member bank).

⁵ 12 U.S.C. 3106(a) (generally subjecting foreign banking organizations to the Bank Holding Company Act).

⁶ 12 U.S.C. 602 and 625 (requiring Edge and agreement corporations to "make reports to the Board of Governors of the Federal Reserve System at such times and in such form as it may require").

Act.⁷ Survey submissions under the FR 3052 are voluntary.

The questions asked on each survey will vary. The Board's ability to keep confidential responses to the FR 3052 must therefore be determined on a case-by-case basis. Much of the information collected is likely to constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (FOIA).⁸ Some survey responses may also contain information contained in or related to an examination of a financial institution, which may be kept confidential under exemption 8 of the FOIA.⁹

Responses to the FR 3052 are tabulated and summarized at the Board. This aggregate information is not considered confidential, and aggregate survey information may be cited in published material such as Board studies or working papers, professional journals, the Federal Reserve Bulletin, testimony and reports to the Congress, or other vehicles.

Board of Governors of the Federal Reserve System, May 21, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11151 Filed 5-25-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Policy Impact Survey (FR 3075; OMB No. 7100-0362).

DATES: Comments must be submitted on or before July 26, 2021.

ADDRESSES: You may submit comments, identified by FR 3075, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at

⁷ 12 U.S.C. 5361 (authorizing the Board to require reports of financial condition and compliance from nonbank financial companies subject to the Board's supervision).

⁸ 5 U.S.C. 552(b)(4).

⁹ 5 U.S.C. 552(b)(8).

<https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov

Include the OMB number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions,

supporting statement, and other documentation will be available at <https://www.reginfo.gov/public/do/PRAMain>, if approved. These documents will also be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Policy Impact Survey.

Agency form number: FR 3075.

OMB control number: 7100-0362.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), any nonbank financial company that the Financial Stability Oversight Council has determined should be supervised by the Board, and the combined domestic operations of foreign banking organizations.

Estimated number of respondents: 14.

Estimated average hours per response: 700.

Estimated annual burden hours: 68,600.

General description of report: This survey collects information from certain types of institutions regulated by the Board in order to assess the effects of proposed, pending, or recently adopted policy changes at the domestic and international levels. The Board uses the survey to collect information used for certain quantitative impact studies (QISs)¹ sponsored by financial stability bodies such as the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB). Recent collections have included the Basel III monitoring exercise, which monitors the global impact of the Basel III framework,² the global systemically important bank (G-SIB) exercise, which assesses firms' systemic risk profiles,³ and a survey of the domestic systemic risk footprint of large foreign banking organizations. Since the collected data may change from survey to survey, there is no fixed reporting form.

Legal authorization and confidentiality: Information collected under the FR 3075 is authorized by the Board's reporting authorities, which are located in section 5(c) of the Bank Holding Company Act⁴ for bank holding companies and their subsidiaries, section 10(b)(2) of the Home Owners' Loan Act⁵ for savings and loan holding companies and their subsidiaries, section 161(a) of the Dodd-Frank Act⁶ for nonbank financial companies supervised by the Board, section 8(a) of the International Banking Act and section 5(c) of the Bank Holding Company Act⁷ for the combined domestic operations of certain foreign banking organizations, section 9 of the Federal Reserve Act⁸ for state member banks, sections 25 and 25A of the Federal Reserve Act⁹ for Edge and agreement corporations, and section 7(c)(2) of the International Banking Act and section 7(a) of the Federal Deposit Insurance Act¹⁰ for U.S. branches and agencies of foreign banks. Response to the FR 3075 is voluntary.

The questions asked on each survey will vary. The Board's ability to keep confidential responses to the FR 3075

¹ A QIS is a survey of financial institutions that allows supervisors to assess the quantitative impact of policy changes.

² For more information on the Basel III monitoring exercise, including recent examples of QISs sponsored by BCBS and conducted by the Board, see www.bis.org/bcbs/qis/.

³ For more information on the G-SIB exercise, see www.bis.org/bcbs/gsib/.

⁴ 12 U.S.C. 1844(c).

⁵ 12 U.S.C. 1467a(b)(2).

⁶ 12 U.S.C. 5361(a).

⁷ 12 U.S.C. 3106(a) and 1844(c).

⁸ 12 U.S.C. 324.

⁹ 12 U.S.C. 602 and 625.

¹⁰ 12 U.S.C. 3105(c)(2) and 1817(a).

must therefore be determined on a case-by-case basis. To the extent responses include nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, such information may be kept confidential pursuant to exemption 4 of the Freedom of Information Act (FOIA).¹¹ Some survey responses may also contain information contained in or related to an examination of a financial institution, which may be kept confidential under exemption 8 of FOIA.¹² To the extent a respondent submits personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.¹³

Aggregate survey information from the FR 3075 is not considered confidential and may be cited in published material such as Board studies or working papers, proposed or final rules, professional journals, the *Federal Reserve Bulletin*, testimony and reports to the Congress, or other vehicles.

Board of Governors of the Federal Reserve System, May 20, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11138 Filed 5-25-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Financial Statements for Holding Companies (FR Y-9 reports; OMB Control Number 7100-0128), the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314/2314S, OMB No. 7100-0073), the Financial Statements of U.S. Nonbank Subsidiaries held by Foreign Banking Organizations (FR Y-7N/7NS/7Q, OMB No. 7100-0125), and the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y-11/11S, OMB No. 7100-0244). The Board previously approved these

¹¹ 5 U.S.C. 552(b)(4).

¹² 5 U.S.C. 552(b)(8).

¹³ 5 U.S.C. 552(b)(6).

revisions on a temporary basis, for a period of six months, effective December 2, 2020. The Board is now extending approval of these information collections for three years, with revisions that will remain in effect through December 31, 2021.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer—Will Bestani—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections

(1) *Report title:* Financial Statements for Holding Companies.

Agency form numbers: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS.

OMB control number: 7100-0128.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies, securities holding companies, and U.S. intermediate holding companies (collectively, holding companies).¹

¹ The following depository institution holding companies are exempt: (1) A unitary savings and loan holding company with primarily commercial assets that meets the requirements of section

Estimated number of respondents:
FR Y-9C (non-advanced approaches holding companies with less than \$5 billion in total assets)—124,
FR Y-9C (non-advanced approaches holding companies with \$5 billion or more in total assets)—218,
FR Y-9C (advanced approaches holding companies)—9,
FR Y-9LP—416,
FR Y-9SP—3,739,
FR Y-9ES—78,
FR Y-9CS—236.

Estimated average hours per response:
Reporting
FR Y-9C (non-advanced approaches holding companies with less than \$5 billion in total assets)—35.72,
FR Y-9C (non-advanced approaches holding companies with \$5 billion or more in total assets)—44.92,
FR Y-9C (advanced approaches holding companies)—50.14,
FR Y-9LP—5.27,
FR Y-9SP—5.40,
FR Y-9ES—0.50,
FR Y-9CS—0.50.
Recordkeeping
FR Y-9C—1,
FR Y-9LP—1,
FR Y-9SP—0.50,
FR Y-9ES—0.50,
FR Y-9CS—0.50.

Estimated annual burden hours:
Reporting
FR Y-9C (non-advanced approaches holding companies with less than \$5 billion in total assets)—17,717,
FR Y-9C (non-advanced approaches holding companies with \$5 billion or more in total assets)—39,170,
FR Y-9C (advanced approaches holding companies)—1,805,
FR Y-9LP—8,769,
FR Y-9SP—40,381,
FR Y-9ES—39,
FR Y-9CS—472.
Recordkeeping
FR Y-9C—1,404,
FR Y-9LP—1,664,
FR Y-9SP—3,739,
FR Y-9ES—39,
FR Y-9CS—472.

General description of report: The FR Y-9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. The Board

10(c)(9)(c) of the Home Owners' Loan Act, for which thrifts make up less than 5 percent of its consolidated assets; and (2) any depository institution holding company that is an insurance underwriting company, or that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk).

requires holding companies to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations. The FR Y-9C, FR Y-9LP, and FR Y-9SP serve as standardized financial statements for the holding companies. The FR Y-9ES is a financial statement for holding companies that are Employee Stock Ownership Plans. The Board uses the voluntary FR Y-9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. Holding companies file the FR Y-9C on a quarterly basis, the FR Y-9LP quarterly, the FR Y-9SP semiannually, the FR Y-9ES annually, and the FR Y-9CS on a schedule that is determined when this supplement is used.

Legal authorization and confidentiality:

The reporting and recordkeeping requirements associated with the FR Y-9 series of reports are authorized for bank holding companies pursuant to section 5 of the Bank Holding Company Act ("BHC Act");² for savings and loan holding companies ("SLHCs") pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act, 12 U.S.C. 1467a(b)(2) and (3), as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"); for intermediate holding companies ("IHCs") pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act;³ and for securities holding

² 12 U.S.C. 1844.

³ 12 U.S.C. 5311(a)(1) and 5365; Section 165(b)(2) of Title I of the Dodd-Frank Act, 12 U.S.C. 5365(b)(2), refers to "foreign-based bank holding company." Section 102(a)(1) of the Dodd-Frank Act, 12 U.S.C. 5311(a)(1), defines "bank holding company" for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act, 12 U.S.C. 3106(a). The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act, 12 U.S.C. 5365(b)(1)(B)(iv), certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form U.S. intermediate holding companies. Accordingly, the parent foreign-based organization of a U.S. IHC is treated as a BHC for purposes of the BHC Act and section 165 of the Dodd-Frank Act. Because section 5(c) of the BHC Act authorizes the Board to require reports from subsidiaries of BHCs, section 5(c) provides additional authority to require U.S. IHCs to report

companies pursuant to section 618 of the Dodd-Frank Act.⁴ Except for the FR Y-9CS report, which is expected to be collected on a voluntary basis, the obligation to submit the remaining reports in the FR Y-9 series of reports and to comply with the recordkeeping requirements set forth in the respective instructions to each of the other reports is mandatory.

With respect to the FR Y-9C report, Schedule HI's Memorandum item 7.g, "FDIC deposit insurance assessments," Schedule HC-P's item 7.a, "Representation and warranty reserves for 1-4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies," and Schedule HC-P's item 7.b, "Representation and warranty reserves for 1-4 family residential mortgage loans sold to other parties" are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act ("FOIA")⁵ because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. Disclosing these data items also may reveal confidential examination and supervisory information, and in such instances, the information also would be withheld pursuant to exemption 8 of the FOIA,⁶ which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y-9C report and the FR Y-9SP report, Schedule HC's Memorandum item 2.b, the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA⁷ if the identity of the engagement partner is treated as private information by the holding company. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y-9C, Schedule HC-C regarding loans modified under section 4013 of the CARES Act (Memorandum item 16.a, "Number of Section 4013 loans outstanding," and Memorandum item

the information contained in the FR Y-9 series of reports.

⁴ 12 U.S.C. 1850a(c)(1)(A).

⁵ 5 U.S.C. 552(b)(4).

⁶ 5 U.S.C. 552(b)(8).

⁷ 5 U.S.C. 552(b)(4).

16.b, "Outstanding balance of Section 4013 loans") are considered confidential. While the Board generally makes institution-level FR Y-9C report data publicly available, the disclosure of these items at the holding company level would not be in the public interest.⁸ Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8).⁹ Holding companies may be reluctant to offer modifications under section 4013 if information on these modifications is publicly available, as analysts, investors, and other users of public FR Y-9C report information may penalize an institution for using the relief provided by the CARES Act.

Aside from the data items described above, the remaining data items collected on the FR Y-9C report and the FR Y-9SP report are generally not accorded confidential treatment. The data items collected on FR Y-9LP, FR Y-9ES, and FR Y-9CS¹⁰ reports are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information,¹¹ however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate and will inform the respondent if the request for confidential treatment has been granted or denied.

To the extent the instructions to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports direct the financial institution to retain the workpapers and related materials used in preparation of the respective report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information may be considered confidential pursuant to exemption 8 of the FOIA.¹² In addition, the workpapers and related materials may also be

⁸ See 12 U.S.C. 1464(v)(2).

⁹ Exemption 8 of the Freedom of Information Act (FOIA) specifically exempts from disclosure information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

¹⁰ The FR Y-9CS is a supplemental report that may be utilized by the Board to collect additional information that is needed in an expedited manner from holding companies. The information collected on this supplemental report is subject to change as needed. Generally, the FR Y-9CS report is treated as public. However, where appropriate, data items on the FR Y-9CS report may be withheld under exemptions 4 or 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

¹¹ 12 CFR part 261.

¹² 5 U.S.C. 552(b)(8).

protected by exemption 4 of the FOIA to the extent such financial information is treated as confidential by the respondent.¹³

2. *Report title:* Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies and Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies.

Agency form number: FR Y-11 and FR Y-11S.

OMB control number: 7100-0244.

Frequency: Quarterly and annually.

Respondents: Domestic bank holding companies, savings and loan holding companies, securities holding companies, and intermediate holding companies.

Estimated number of respondents: FR Y-11 (quarterly): 445; FR Y-11 (annually): 189; FR Y-11S: 273.

Estimated average hours per response: FR Y-11 (quarterly): 7.6; FR Y-11 (annually): 7.6; FR Y-11S: 1.

Estimated annual burden hours: FR Y-11 (quarterly): 13,528 hours; FR Y-11 (annually): 1,436 hours; FR Y-11S: 273 hours.

General description of report: The FR Y-11 family of reports collects financial information for individual U.S. nonbank subsidiaries of domestic holding companies, which is essential for monitoring the subsidiaries' potential impact on the condition of the holding company or its subsidiary banks. Holding companies file the FR Y-11 on a quarterly or annual basis or the FR Y-11S on an annual basis, predominantly based on whether the organization meets certain asset size thresholds.

Legal authorization and confidentiality: The Board has the authority to require bank holding companies and any subsidiary thereof, savings and loan holding companies and any subsidiary thereof, and securities holding companies and any affiliate thereof to file the FR Y-11 pursuant to, respectively, section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), and section 618 of the Dodd-Frank Act (12 U.S.C. 1850a). With respect to foreign banking organizations and their subsidiary intermediate holding companies, section 5(c) of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106), authorizes the board to require foreign banking organizations and any subsidiary thereof to file the FR Y-11 reports. These reports are mandatory.

Information collected in these reports generally is not considered confidential.

¹³ 5 U.S.C. 552(b)(4).

However, because the information is collected as part of the Board's supervisory process, certain information may be afforded confidential treatment pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). Individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA if the data has not previously been publicly disclosed and the release of the data is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondents (5 U.S.C. 552(b)(4)). Additionally, individual respondents may request that personally identifiable information be afforded confidential treatment pursuant to exemption 6 of the FOIA if the release of the information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). The applicability of the FOIA exemptions 4 and 6 would be determined on a case-by-case basis.

3. *Report title:* The Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, and the Capital and Asset Report of Foreign Banking Organizations.

Agency form number: FR Y-7N, FR Y-7NS, and FR Y-7Q.

OMB control number: 7100-0125.

Frequency: Quarterly and annually.

Respondents: Foreign banking organizations.

Estimated number of respondents: FR Y-7N (quarterly): 35; FR Y-7N (annually): 19; FR Y-7NS: 22; FR Y-7Q (quarterly): 130; FR Y-7Q (annually): 29.

Estimated average hours per response: FR Y-7N (quarterly): 7.6; FR Y-7N (annually): 7.6; FR Y-7NS: 1; FR Y-7Q (quarterly): 2.25; FR Y-7Q (annually): 1.5

Estimated annual burden hours: FR Y-7N (quarterly): 1,064 hours; FR Y-7N (annually): 144 hours; FR Y-7NS: 22 hours; FR Y-7Q (quarterly): 1,170 hours; FR Y-7Q (annually): 44 hours.

General description of report: The FR Y-7N and the FR Y-7NS are used to assess a foreign banking organization's ability to be a continuing source of strength to its U.S. nonbank operations and to determine compliance with U.S. laws and regulations. Foreign banking organizations file the FR Y-7N quarterly or annually, or the FR Y-7NS annually, predominantly based on asset size thresholds. The FR Y-7Q is used to assess consolidated regulatory capital and asset information from all foreign

banking organizations. The FR Y-7Q is filed quarterly by foreign banking organizations that have effectively elected to become or be treated as a U.S. financial holding company and by foreign banking organizations that have total consolidated assets of \$50 billion or more, regardless of financial holding company status. All other foreign banking organizations file the FR Y-7Q annually.

Legal authorization and confidentiality: With respect to foreign banking organizations and their subsidiary intermediate holding companies, section 5(c) of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106), authorizes the board to require foreign banking organizations and any subsidiary thereof to file the FR Y-7N reports and the FR Y-7Q. Information collected in these reports generally is not considered confidential. However, because the information is collected as part of the Board's supervisory process, certain information may be afforded confidential treatment pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). Individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA if the data is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondents (5 U.S.C. 552(b)(4)). Additionally, individual respondents may request that personally identifiable information be afforded confidential treatment pursuant to exemption 6 of the FOIA if the release of the information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). The applicability of the FOIA exemptions 4 and 6 would be determined on a case-by-case basis.

4. *Report title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations and the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 and FR 2314S.

OMB control number: 7100-0073.

Frequency: Quarterly and annually.

Respondents: U.S. state member banks, bank holding companies, savings and loan holding companies, intermediate holding companies, and Edge or agreement corporations.

Estimated number of respondents: FR 2314 (quarterly): 439; FR 2314 (annually): 239; FR 2314S: 300.

Estimated average hours per response: FR 2314 (quarterly): 7.2; FR 2314 (annually): 7.2; FR 2314S: 1.

Estimated annual burden hours: FR 2314 (quarterly): 12,643 hours; FR 2314 (annually): 1,721 hours; FR 2314S: 300 hours.

General description of report: The FR 2314 family of reports is the only source of comprehensive and systematic data on the assets, liabilities, and earnings of the foreign nonbank subsidiaries of U.S. banking organizations, and the data are used to monitor the growth, profitability, and activities of these foreign companies. The data help the Board identify present and potential problems of these companies, monitor their activities in specific countries, and develop a better understanding of activities within the industry and within specific institutions. Parent organizations (state member banks, Edge and agreement corporations, or holding companies) file the FR 2314 on a quarterly or annual basis, or the FR 2314S on an annual basis, predominantly based on whether the organization meets certain asset size thresholds.

Legal authorization and confidentiality: The Board has the authority to require bank holding companies and any subsidiary thereof, savings and loan holding companies and any subsidiary thereof, and securities holding companies and any affiliate thereof to file the FR 2314 pursuant to, respectively, section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), and section 618 of the Dodd-Frank Act (12 U.S.C. 1850a). The Board has the authority to require state member banks, agreement corporations, and Edge corporations to file the FR 2314 pursuant to, respectively, sections 9(6), 25(7), and 25A(17) of the Federal Reserve Act (12 U.S.C. 324, 602, and 625). With respect to foreign banking organizations and their subsidiary intermediate holding companies, section 5(c) of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106), authorizes the board to require foreign banking organizations and any subsidiary thereof to file the FR 2314 reports. These reports are mandatory.

Information collected in these reports generally is not considered confidential. However, because the information is collected as part of the Board's supervisory process, certain information may be afforded confidential treatment pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). Individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA if the data is nonpublic commercial or financial information, which is both

customarily and actually treated as private by the respondents (5 U.S.C. 552(b)(4)). Additionally, individual respondents may request that personally identifiable information be afforded confidential treatment pursuant to exemption 6 of the FOIA if the release of the information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). The applicability of the FOIA exemptions 4 and 6 would be determined on a case-by-case basis.

Current actions: On December 2, 2020, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, “the agencies”) published an interim final rule (IFR) in the **Federal Register**¹⁴ permitting certain banking organizations to use asset data as of December 31, 2019, in order to determine the applicability of various regulatory asset thresholds during calendar years 2020 and 2021. In connection with the IFR, the Board temporarily revised the instructions for the FR Y-9C, FR Y-9LP, FR 2314/2314S, FR Y-7N/7NS and FR Y-11/11S in order to provide similar temporary relief with regard to reporting requirements. The Board also requested public comment for 60 days on an extension for three years of these collections. Under the proposal, the proposed revisions to these information collections would have remained in effect through December 31, 2021, consistent with the length of the regulatory relief provided by the IFR.

The Board did not receive any comments relevant to the PRA and has adopted the extension of the FR Y-9C, FR Y-9LP, FR 2314, FR 2314S, FR Y-7N, FR Y-7NS, FR Y-11 and FR Y-11S for three years, with revision, as originally proposed, with one minor clarification. Specifically, one commenter sought clarification of the total asset amounts reported and used in calculations related to certain qualifying criteria for the community bank leverage ratio (“CBLR”) framework. Consistent with the clarifications to the Consolidated Reports of Condition and Income (Call Reports, OMB No. 7100-0036), the Board is clarifying the FR Y-9C instructions to reflect that a holding company should continue to use its total as reported in FR Y-9C Schedule HC, item 12, as of the current quarter-end report date when reporting other qualifying criteria for the CBLR framework (that is, the sum of trading assets and trading liabilities as a percentage of total assets in Schedule HC-R, item 33, column B, and total off-

balance sheet exposures as a percentage of total assets in Schedule HC-R, Part I, item 34.d, column B).

The Board and the other agencies have received comments on the IFR. In order to implement reporting changes related to the IFR prior to the expiration of the temporarily approved revisions, the Board has adopted this proposal under the PRA pending review of comments on the IFR. If the Board modifies the IFR through the adoption of a final rule regarding temporary asset threshold relief, the Board would adopt appropriate additional revisions to the FR Y-9C, FR Y-9LP, FR 2314, FR 2314S, FR Y-7N, FR Y-7NS, FR Y-11 or FR Y-11S reports through a separate PRA process.

Board of Governors of the Federal Reserve System, May 20, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11140 Filed 5-25-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products (FR 4029; OMB No. 7100-0330).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB

inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board’s public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection:

Report title: Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products.

Agency form number: FR 4029.

OMB control number: 7100-0330.

Frequency: Annually.

Respondents: State member banks that originate proprietary reverse mortgages.

Estimated number of respondents: Implementation of policies and procedures, 1; Review and maintenance of policies and procedures, 7.

Estimated average hours per response: Implementation of policies and procedures, 40; Review and maintenance of policies and procedures, 8.

Estimated annual burden hours: Implementation of policies and procedures, 40; Review and maintenance of policies and procedures, 56.

General description of report: The reverse mortgage guidance discusses the reporting, recordkeeping, and disclosures required by federal laws and regulations and also discusses consumer disclosures that financial institutions typically provide as a standard business practice.

Legal authorization and confidentiality: The information collection is authorized pursuant to the Board’s examination authority, which is located in section 11 of the Federal Reserve Act for state member banks.¹

¹ 12 U.S.C. 248. Although there is no information indicating that Federal Reserve-supervised financial institutions other than state member banks originate reverse mortgage loans, this collection would be authorized by sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602, 625) for Edge and Agreement corporations and by section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) for bank holding companies as well as, in conjunction with section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), for foreign banking organizations. The information collection would be authorized by the examination authority in section 7(c) of the International Banking Act (12

¹⁴ 85 FR 77345 (December 2, 2020).

The guidance is voluntary. Because the documentation encouraged by the guidance is maintained by each institution, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of the examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process.² In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects trade secrets and commercial or financial information that is both customarily and actually treated as private by the respondent.³

Current actions: On February 17, 2021, the Board published an initial notice in the **Federal Register** (86 FR 9940) requesting public comment for 60 days on the extension, without revision, of the FR 4029. The comment period for this notice expired on April 19, 2021. The Board did not receive any comments. The Board will adopt the extension, without revision, of the FR 4029 as originally proposed.

Board of Governors of the Federal Reserve System, May 20, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–11139 Filed 5–25–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC seeks public comments on a proposed amendment to its previously approved information requests sent pursuant to compulsory process to the largest domestic cigarette

manufacturers. The additional information sought consists of the annual sales, give aways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products. The current FTC clearance from OMB to collect information from cigarette manufacturers expires December 31, 2023.

DATES: Comments on the proposed information requests must be received on or before June 25, 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. The reginfo.gov web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB’s Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mailstop CC–10507, Washington, DC 20580, (202) 326–2699.

SUPPLEMENTARY INFORMATION:

Title: FTC Cigarette and Smokeless Tobacco Data Collection.

OMB Control Number: 3084–0134.

Type of Review: Amendment of a currently approved collection.

On June 25, 2020, the FTC sought public comment on the information collection requirements associated with the Cigarette and Smokeless Tobacco Data Collection. 85 FR 38139. On October 23, 2020, the FTC provided a second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Cigarette and Smokeless Tobacco Data Collection. 85 FR 67541. On December 14, 2020, OMB approved the proposed information collection through December 31, 2023.

In response to the June 25, 2020 Notice, the Commission received a comment from Truth Initiative that among other things recommended that the Commission collect information regarding heated tobacco products with its cigarette Orders. In the October 23, 2020 Notice, the Commission agreed “that heated, non-combusted tobacco products [we]re an important emerging segment of the tobacco market” and stated that it would “monitor these

products and . . . consider whether and how best to collect information about these products when the market has further developed to make such information collection warranted.”

The Commission now believes that a narrow collection of information related to heated, non-combusted tobacco products is warranted. Heated, non-combusted cigarettes already fall within the definition of cigarettes, which are covered by the currently approved information collection. The electronic devices in which such cigarettes are heated do not fall within the definition of cigarettes, and thus are not covered by the approved information collection.

The Commission proposes asking each cigarette manufacturing recipient to state whether it sold heated, non-combusted, cigarettes during a calendar year, and if so to report for the calendar year, the net number of heating devices designed to be used with heated cigarettes that it sold in the United States, the net dollar value of such devices sold, the net number of such devices it gave away in the United States, and the total amount it expended on the advertising, merchandising, or promotion in the United States of such devices. With its next annual information collection from cigarette manufacturing recipients in early 2022, the Commission proposes to collect this additional information for 2019, 2020, and 2021.

The FTC’s understanding of the overall market for nicotine-based products is incomplete without more information regarding heated, non-combusted cigarettes and the corresponding devices. For example, the information could assist the Commission in conducting a study of the sales and marketing of these devices. Thus, the proposed addition will assist the Commission in closing this gap in our understanding.

Burden Statement

Estimated Annual Burden: 106 hours.

Estimated Number of Respondents: Ten 6(b) recipients (maximum).¹

¹ Since three and possibly more of the cigarette manufacturing 6(b) recipients are parent companies that have separately incorporated subsidiaries or affiliates that the FTC anticipates or expects that the parent companies will transmit the collection instrument to and seek information from, the proposal to send up to ten 6(b) Orders could equate to 15 “persons” under the PRA. See 5 CFR 1320.3(c)(4) (“[ten or more persons] . . . refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including . . . separately incorporated subsidiaries or affiliates.”).

U.S.C. 3105(c) for branches and agencies of foreign banks and by section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a) for savings and loan holding companies.

² 5 U.S.C. 552(b)(8).

³ 5 U.S.C. 552(b)(4).

These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent companies that receive the information requests.

Estimated Average Burden per Year per Request: 11 hours.

(a) Information requests to the four largest recipients of the Commission's information request, at a per request average each year of 25 hours = 100 hours, cumulatively, per year; and

(b) Information requests to six additional respondents, of smaller size, at a per request average each year of 1 hour = 6 hours, cumulatively, per year.

Estimated Annual Labor Cost: \$10,600.

It is not possible to calculate precisely the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. The estimate assumes that personnel with technical training will handle most of the tasks involved in the data collection process, although legal personnel will likely be involved in preparing the actual submission to the Commission. Staff has applied an average hourly wage of \$100/hour for the combined labor classifications.

Thus, estimated total labor costs for up to 10 information requests is \$10,600 per year (derived from \$100/hour × 106 annual hours).

Estimated Capital or Other Non-Labor Cost: De minimis.

Request for Comment

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas,

patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021-11108 Filed 5-25-21; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day-21-0051]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled "Assessment of Chemical Exposures (ACE) Investigations" to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on 02/24/2021 to obtain comments from the public and affected agencies. ATSDR received no comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy

of the information collection plan and instruments, call (404) 639-7570.

Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessment of Chemical Exposures (ACE) Investigations (OMB Control No. 0923-0051, Exp. 02/28/2021)—Reinstatement with Change—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act (PRA) clearance for the generic clearance information collection request (Generic ICR) titled "Assessment of Chemical Exposures (ACE) Investigations" (OMB Control No. 0923-0051; Exp. Date 02/28/2021). This request is a Reinstatement with Change.

ATSDR conducts ACE Investigations to assist state and local health departments after acute environmental incidents. ATSDR has successfully completed five investigations to date using this valuable mechanism, and would like to continue these impactful information collections. A summary of recent information collections approved under this tool includes the following:

- During 2015, in U.S. Virgin Islands there was a methyl bromide exposure incident at a condominium resort severely injuring a family and causing symptoms in the first responders to the incident. ATSDR interviewed all potentially exposed persons who stayed or worked at the resort to look for signs of exposure. Under this ACE investigation, ATSDR raised awareness among pest control companies that methyl bromide is currently prohibited in homes and other residential settings. Additionally, ATSDR raised awareness among clinicians about the toxicologic syndrome caused by exposure to methyl bromide and the importance of notifying first responders immediately when they have encountered contaminated patients.

- During 2016, the ACE Team conducted a rash investigation in Flint, Michigan. Persons who were exposed to Flint municipal water and had current or worsening rashes were surveyed and referred to free dermatologist screening if desired. Findings revealed that when the city was using water from the Flint River, there were large swings in chlorine, pH, and hardness, which could be one possible explanation for the eczema-related rashes.

- During 2016, the ACE Team also conducted a follow-up investigation for people who were referred to a dermatologist in the first Flint investigation. The follow-up interviews resulted in improvements in medical exam and referral processes that were still on-going at the time.

The ACE Investigations have focused on performing rapid epidemiological assessments to assist state, regional, local, or tribal health departments (the requesting agencies) to respond to, or prepare for acute chemical releases. The main objectives for performing these rapid assessments are to:

- Characterize exposure and acute health effects of the affected community to inform health officials and the community;

- Identify needs (*i.e.*, medical, mental health, and basic) of those exposed during the incidents to aid in planning interventions in the community;

- Determine the sequence of events responsible for the incident so that actions can be taken to prevent future incidents;

- Assess the impact of the incidents on the emergency response and health services use and share lessons learned for use in hospital, local, and state planning for environmental incidents; and

- Identify cohorts that may be followed and assessed for persistent health effects resulting from environmental releases.

Because each incident is different, it is not possible to predict in advance exactly what type of, or how many respondents will be consented and interviewed to effectively evaluate the incident. Respondents typically include,

but are not limited to, emergency responders such as police, fire, hazardous material technicians, emergency medical services, and personnel at hospitals where patients from the incident were treated. Incidents may occur at businesses or in the community setting; therefore, respondents may also include business owners, managers, workers, customers, community residents, and those passing through the affected area.

The multidisciplinary ACE Team consisting of staff from ATSDR, the Centers for Disease Control and Prevention (CDC), and the requesting agencies will be collecting data. ATSDR has developed a series of draft survey forms to be quickly tailored in the field to meet the goals of the investigation. ATSDR collections will be administered based on time permitted and urgency. For example, it is preferable to administer the General Survey to as many respondents as possible. However, if there are time constraints, the shorter Household Survey or the Epidemiologic Contact Assessment Symptom Exposure (Epi CASE) Survey (proposed to replace the former ACE Short Form), may be administered instead. The individual surveys collect information about exposure, acute health effects, health services use, medical history, needs resulting from the incident, communication during the release, health impact on children, and demographic data. Hospital personnel are asked about the surge, response and communication, decontamination, and lessons learned.

Depending on the situation, data can be collected by face-to-face interviews, telephone interviews, written surveys, mailed surveys, or on-line surveys. Medical charts may also be reviewed. In rare situations, an investigation might involve collection of clinical specimens.

ATSDR is proposing to increase the utility of this Generic ICR in response to stakeholder requests. We would like to expand the ACE toolkit to be more inclusive of other types of environmental incidents affecting the community which fall under ATSDR's

mandate and, at times, the mandates of our partners in the CDC's National Center for Environmental Health (NCEH) and the National Center for Occupational Safety and Health (NIOSH). In addition to acute chemical releases, we propose to include radiological and nuclear incidents, explosions, natural disasters, and other environmental incidents.

We propose revisions to select information collection forms, which will be deployed using handheld devices whenever possible to reduce burden, and to adjust the number of responses and time per response for several forms. A new brief Eligibility Screener (1,000 responses per year; 33 hours) will be added prior to administering consent for our General and Household Surveys. The Epi CASE Survey replaces the ACE Short Form, which has been modified for the expanded scope of eligible incidents requested (1,000 responses per year; 250 hours). To reduce time burden, there will be new field data entry screens and deletion of unused questions for the General Survey (800 responses per year; 373 hours), the Household Survey (120 responses per year; 20 hours) and for the Hospital Survey (40 responses per year; 17 hours). There will be two optional short Mental Health Screeners added to the General Survey. One screener measures both acute stress disorder and major depressive disorder, and the other one is strictly focused on generalized anxiety disorder. We are retaining the Medical Chart Abstraction Form (250 responses per year; 125 hours) but are removing the Veterinary Chart Abstraction Form as it has not been used in the past.

ATSDR anticipates up to four ACE investigations per year. We are requesting approval for 3,210 annual responses (increase of 1,920 responses per year) and for 818 annual hours (increase of 227 hours per year). Participation in ACE investigations is voluntary and there are no anticipated costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Residents, first responders, business owners, employees, customers.	Eligibility Screener	1,000	1	2/60
	Epi CASE Survey	1,000	1	15/60
	General Survey	800	1	28/60
Residents	Household Survey	120	1	10/60
Hospital staff	Hospital Survey	40	1	25/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Staff from state, local, or tribal health agencies.	Medical Chart Abstraction Form	25	10	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–11146 Filed 5–25–21; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0572; Docket No. CDC–2021–0052]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Health Message Testing System (HMTS). The Health Message Testing System (HMTS), a generic information collection, enables programs across CDC to collect the information they require regarding testing of messages in a timely manner.

DATES: CDC must receive written comments on or before July 26, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0052 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and

Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Health Message Testing System (HMTS) (OMB Control No. 0920–0572, Exp. 8/31/2021)—Extension—Office of the Associate Director for Communication (OADC), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

Before CDC disseminates a health message to the public, the message always undergoes scientific review. However, even though the message is based on sound scientific content, there is no guarantee that the public will understand a health message or that the message will move people to take recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages, and provisional versions of the messages must be tested with members of the target audience.

However, increasingly there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need.

In the interest of timely health message dissemination, many programs forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (i.e., the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

The Health Message Testing System (HMTS), a generic information

collection, enables programs across CDC to collect the information they require in a timely manner to:

- Ensure quality and prevent waste in the dissemination of health information by CDC to the public.
- Refine message concepts and to test draft materials for clarity, salience, appeal, and persuasiveness to target audiences.
- Guide the action of health communication officials who are responding to health emergencies, Congressionally-mandated campaigns with short timeframes, media-generated public concern, time-limited communication opportunities, trends, and the need to refresh materials or dissemination strategies in an ongoing campaign.

Each testing instrument will be based on specific health issues or topics. Although it is not possible to develop one instrument for use in all instances, the same kinds of questions are asked in most message testing. This package includes generic questions and formats that can be used to develop health message testing data collection instruments. These include a list of screening questions, comprised of demographic and introductory questions, along with other questions that can be used to create a mix of relevant questions for each proposed message testing data collection method. However, programs may request to use additional questions if needed.

Message testing questions will focus on issues such as comprehension, impressions, personal relevance, content and wording, efficacy of response, channels, and spokesperson/ sponsor. Such information will enable message developers to enhance the

effectiveness of messages for intended audiences.

Data collection methods proposed for HMTS include intercept interviews, telephone interviews, focus groups, online surveys, and cognitive interviews. In almost all instances, data will be collected by outside organizations under contract with CDC.

For many years CDC programs have used HMTS to test and refine message concepts and test draft materials for clarity, salience, appeal, and persuasiveness to target audiences. Having this generic clearance available has enabled them to test their information and get critical health information out to the public quickly. Over the last three years, more than 32 messages have been tested using this clearance. For example:

CDC Older Adult Injury Prevention Creative Campaign—Survey. This health communication campaign aimed to support and expand upon CDC’s older adult injury prevention efforts and to raise awareness among older adults and their caregivers about preventable injuries that disproportionately impact them, steps to reduce their risk of injuries, and increase education about risk factors. Information collected can assist in the most effective use of CDC communication resources and opportunities by assessing clarity, appeal, persuasiveness and effectiveness of campaign material and advertisements (e.g., poster or video advertisement).

The Division of Tuberculosis Elimination (DTBE) obtained OMB approval through HMTS for Health Communications Testing for Latent Tuberculosis Infections Campaign for CDC’s National Center for HIV/AIDS,

Viral Hepatitis, STD, and TB Prevention (NCHHSTP). This formative information collection will be used to inform NCHHSTP DTBE’s future public service campaign efforts targeted to consumers at high-risk for LTBI and the providers who serve them. This information collection activity is essential because it will provide CDC with effective messages for communicating about this disease and infection to motivate at-risk consumers to get preventive screening and, if infected, treatment, and to motivate healthcare providers to encourage testing and early detection.

The Division of Diabetes Translation (DDT) obtained OMB approval through HMTS for Message Testing for Diabetes Self-Management Education and Support (DSMES) Marketing Support: Card Sort Activity. Findings from this message testing effort were used by DDT to inform how best to communicate with key audiences about DSMES services. Specifically, information about which attributes of DSMES services are most important to each audience will be identified and will serve as the basis for messages developed to promote DSMES services. This work will help increase the likelihood that messages will resonate and be understood as intended.

Over 27,696 respondents were queried and over 6,100 burden hours used during the previous approval period. Because the availability of this ICR has been so critical to programs in disseminating their materials and information to the public in a timely manner, OADC is requesting a three-year extension of this information collection. CDC requests OMB approval for an estimated 2,470 annualized burden hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Health Professionals, Health Care Providers, State and Local Public Health Officials, Emergency Responders, General Public.	Moderator’s Guides, Eligibility Screeners, Interview Guides, Opinion Surveys, Consent Forms.	18,525	1	8/60	2,470
Total .....	.....	.....	.....	.....	2,470

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021-11096 Filed 5-25-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1102; Docket No. CDC–2021–0050]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Tuberculosis Data from Panel Physicians. This study collects Tuberculosis data gathered during overseas immigration medical exams.

DATES: Written comments must be received on or before July 26, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0050 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

Please note: Submit all comments through the Federal eRulemaking portal ([regulations.gov](https://www.regulations.gov)) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies

must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Information Collection for Tuberculosis Data from Panel Physicians (OMB Control No. 0920–1102, Exp. 9/30/2021)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Immigrant, Refugee, and Migrant Health Branch (IRMH), requests approval for a Revision of an existing information collection. This project pertains to collecting annual reports on certain tuberculosis data from U.S. panel physicians.

The respondents are panel physicians. More than 760 panel physicians from

336 panel sites perform overseas pre-departure medical examinations in accordance with requirements, referred to as technical instructions, provided by DGMQ's Quality Assessment Program (QAP). The role of QAP is to assist and guide panel physicians in the implementation of the technical instructions; evaluate the quality of the overseas medical examination for U.S.-bound immigrants and refugees; assess potential panel physician sites; and provide recommendations to the U.S. Department of State in matters of immigrant medical screening.

To achieve DGMQ's mission, IRMH works with domestic and international programs to improve the health of U.S.-bound immigrants and refugees to protect the U.S. public by preventing the importation of infectious disease. These goals are accomplished through IRMH's oversight of medical exams required for all U.S.-bound immigrants and refugees who seek permanent residence in the U.S. IRMH is responsible for assisting and training the international panel physicians with the implementation of medical exam Technical Instructions (TI). Technical Instructions are detailed requirements and national policies regarding the medical screening and treatment of all U.S.-bound immigrants and refugees.

Screening for tuberculosis (TB) is a particularly important component of the immigration medical exam and allows panel physicians to diagnose active TB disease prior to arrival in the United States. As part of the TI requirements, panel physicians perform chest x-rays and laboratory tests that aid in the identification of TB infection (Class B1 applicants) and diagnosis of active TB disease (Class A, inadmissible applicants). CDC uses these classifications to report new immigrant and refugee arrivals with a higher risk of developing TB disease to U.S. state and local health departments for further follow-up. Some information that panel physicians collect as part of the medical exam is not reported on the standard Department of State forms (DS-forms), thereby preventing CDC from evaluating TB trends in globally mobile populations and monitoring program effectiveness.

Currently, CDC is requesting this data be sent by panel physicians once per year. The consequences of reducing this frequency would be the loss of monitoring program impact and TB burdens in mobile populations, and immigrants and refugees coming to the United States on an annual basis. The total burden hours requested is 999. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
International Panel Physicians	TB Indicators REDCap web form	333	1	3	999
Total .....	.....	.....	.....	.....	999

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.

[FR Doc. 2021-11148 Filed 5-25-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[60Day-21-0222; Docket No. CDC-2021-0051]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER). This generic clearance request, requests approval for collection of information that encompasses general questionnaire development, pre-testing, and measurement-error reduction activities to be carried out in 2021-2024.

DATES: CDC must receive written comments on or before July 26, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2021-0051 by any of the following methods:

- *Federal eRulemaking Portal:* Regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600

Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to Regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER) (OMB Control No. 0920-0222, Exp. 08/31/2021)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data to support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The Collaborating Center for Questionnaire Design and Evaluation Research (CCQDER) is the focal point within NCHS for questionnaire and survey development, pre-testing, and evaluation activities for CDC surveys such as; the National Survey of Family Growth (NSFG) (OMB Control No. 0920-0314), the Research and Development Survey (RANDS), including RANDS COVID (OMB Control No. 0920-1298), and other federally-sponsored surveys. The CCQDER is requesting three additional years of OMB Clearance for this generic submission.

The CCQDER and other NCHS programs conduct cognitive interviews, focus groups, in-depth or ethnographic interviews, usability tests, field tests/ pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation, as well as

more basic research on measurement errors and survey response.

Various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires are used.

The most common questionnaire evaluation method is the cognitive interview. These evaluations are conducted by the CCQDER. The interview structure consists of respondents first answering a draft survey question and then providing textual information to reveal the processes involved in answering the test question. Specifically, cognitive interview respondents are asked to describe how and why they answered the question as they did. Through the interviewing process, various types of question-response problems that would not normally be identified in a traditional survey interview, such as interpretive errors and recall accuracy, are uncovered. By conducting a comparative analysis of cognitive interviews, it is also possible to determine whether particular interpretive patterns occur within particular sub-groups of the population. Interviews are generally conducted in small rounds totaling 40–100 interviews; ideally, the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights.

Cognitive interviewing is inexpensive and provides useful data on questionnaire performance while minimizing respondent burden. Cognitive interviewing offers a detailed depiction of meanings and processes used by respondents to answer questions—processes that ultimately produce the survey data. As such, the method offers an insight that can transform understanding of question validity and response error. Documented findings from these studies represent tangible evidence of how the question performs. Such documentation also serves CDC data users, allowing them to be critical users in their approach and application of the data.

In addition to cognitive interviewing, a number of other qualitative and

quantitative methods are used to investigate and research measurement errors and the survey response process. These methods include conducting focus groups, usability tests, in-depth or ethnographic interviews, and the administration and analysis of questions in both representative and non-representative field tests. Focus groups are group interviews whose primary purpose is to elicit the basic sociocultural understandings and terminology that form the basis of questionnaire design. Each group typically consists of one moderator and four to 10 participants, depending on the research question. In-depth or ethnographic interviews are one-on-one interviews designed to elicit the understandings or terminology that are necessary for question design, as well as to gather detailed information that can contribute to the analysis of both qualitative and quantitative data. Usability tests are typically one-on-one interviews that are used to determine how a given survey or information collection tool functions in the field, and how the mode and layout of the instrument itself may contribute to survey response error and the survey response process.

In addition to these qualitative methods, NCHS also uses various tools to obtain quantitative data, which can be analyzed alone or analyzed alongside qualitative data to give a much fuller accounting of the survey response process. For instance, phone, internet, mail, and in-person follow-up interviews of previous NCHS survey respondents may be used to test the validity of survey questions and questionnaires, and to obtain more detailed information that cannot be gathered on the original survey. Additionally, field or pilot tests may be conducted on both representative and non-representative samples, including those obtained from commercial survey and web panel vendors. Beyond looking at traditional measures of survey errors (such as item missing rates and non-response, and don't know rates), these pilot tests can be used to run experimental designs in order to capture how different questions function in a field setting. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations.

In 2021–2024 NCHS/CCQDER staff plans to continue research on methods evaluation and general questionnaire design research. We envision that over the next three years, NCHS/CCQDER will work collaboratively with survey researchers from universities and other Federal agencies to define and examine several research areas, including, but not limited to: (1) Differences between face-to-face, telephone, and virtual/video-over internet cognitive interviewing, (2) effectiveness of different approaches to cognitive interviewing, such as concurrent and retrospective probing, (3) reactions of both survey respondents and survey interviewers to the use of Computer Assisted Personal Interviewing (CAPI), Audio Computer-Assisted Self-Interview (ACASI), video-over internet/virtual, (4) social, cultural and linguistic factors in the question response process, and (5) recruitment and respondent participation at varying levels of incentive, in an effort to establish empirical evidence regarding remuneration and coercion. Procedures for each of these studies will be similar to those applied in the usual testing of survey questions. For example, questionnaires that are of current interest (such as RANDS and NIOSH) may be evaluated using several of the techniques described above. Or, different versions of a survey question will be developed, and the variants then administered to separate groups of respondents in order to study the cognitive processes that account for the differences in responses obtained across different versions.

These studies will be conducted either by CCQDER staff, DHHS staff, or NCHS contractors who are trained in cognitive interviewing techniques. The results of these studies will be applied to our specific questionnaire development activities in order to improve the methods that we use to conduct questionnaire testing, and to guide questionnaire design in general.

We are requesting 9,455 annualized hours, totaling 28,365 over three years. This is an increase of 1,672 hours per year or 5,016 hours over three years. The difference is due to an anticipated increase in the number and size of projects being undertaken. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN TABLE

Types of respondents	Form name	Number of respondents	Number of responses per respondent	Average hours per response (in hours)	Total burden hours
Individuals or households	Eligibility Screeners	4,400	1	5/60	367

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Types of respondents	Form name	Number of respondents	Number of responses per respondent	Average hours per response (in hours)	Total burden hours
Individuals or households	Developmental Questionnaires	8,750	1	55/60	8,021
Individuals or households	Respondent Data Collection Sheet ..	8,750	1	5/60	729
Individuals or households	Focus Group Documents	225	1	90/60	338
Total .....	.....	.....	.....	.....	9,455

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021-11147 Filed 5-25-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations—(ORR-2) (OMB #0970-0407)

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a three-year extension of the ORR Cash and Medical Assistance (CMA) Program Quarterly Report on Expenditures and Obligations (ORR-2) (OMB #0970-0407, expiration 8/31/2021). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork

Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:
Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses for the administration the refugee resettlement program at the State level. States and Replacement Designees currently submit the ORR-2 Quarterly Report on Expenditures and Obligations, which provides aggregate expenditure and obligation data. The ORR-2 collects expenditures and obligations data separately for each of the four CMA program components: Refugee cash assistance, refugee medical assistance,

cash and medical assistance administration, and services for unaccompanied minors. This breakdown of financial status data allows ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at CFR 400.211 to collect these data for use in estimating future costs of the refugee resettlement program. ORR must implement the methodology at CFR 400.211 each year after receipt of its annual appropriation to ensure that appropriated funds will be adequate for reimbursement to states of the costs for assistance provided to entering refugees. The estimating methodology prescribed in the regulations requires the use of actual past costs by program component. If the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. The ORR-2 is a single-page financial report that allows ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations.

Respondents: State governments and Replacement Designees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ORR Financial Status Report Cash and Medical Assistance Program, Quarterly Report on Expenditures and Obligations	66	4	1.5	396

Estimated Total Annual Burden Hours: 396.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522 of the Immigration and Nationality Act (the Act) (Title IV, Sec. 412 of the Act) for each state

agency requesting federal funding for refugee resettlement under 8 U.S.C. 524 (Title IV, Sec. 414 of the Act).

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2021-11157 Filed 5-25-21; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Evaluation of the Child Welfare Capacity Building Collaborative (New Collection)

AGENCY: Children's Bureau, Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau, Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for an evaluation of the services provided to child welfare jurisdictions and Court Improvement Programs (CIP) by the Child Welfare Capacity Building Collaborative. This study uses instruments that build on previously approved OMB instruments, including satisfaction surveys, assessment tools, interview protocols, and service-specific feedback forms (OMB #0970-0484, expiration 11/30/22; OMB #0970-0494, expiration 2/28/23).

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning 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: The Capacity Building Collaborative includes three centers (Center for States, Center for Tribes, Center for Courts) funded by the Children's Bureau to provide national child welfare expertise and evidence-

informed training and technical assistance services to state, tribal, and U.S. territorial public child welfare agencies and CIP. The Centers offer services including Web-based content and resources, product development and dissemination, self-directed and group-based training, virtual learning and peer networking events, and tailored consultation, coaching, and facilitation ("tailored services"). Centers' services will be evaluated by Center-specific evaluations and a cross-Center evaluation. *The cross-Center evaluation* will examine collaboration across and within Centers; how well Centers have established themselves nationally, and how the child welfare field perceives their expertise, credibility, and value; what services are delivered by the Centers, and how well they are defined; service recipient satisfaction with service quality; child welfare jurisdiction and federal staff's experiences of assessment and work planning services offered by Centers; effectiveness of Center services; how Centers apply a common "change management approach" in their work; what affects child welfare jurisdiction engagement with and use of Center services; and the costs of Center services. *The Center for States' evaluation* consists of data collection around two research questions and five sub-studies. The research questions focus on understanding usefulness, relevance, and satisfaction from a stakeholder perspective, as well as outcomes of all services, with a focus on tailored services. The sub-studies assess organizational capacities, child welfare policy and practice, and outcomes for children and families. *The Center for Tribes' evaluation* will examine the extent to which the Center provides effective, culturally responsive services that meet the needs of tribal child welfare programs; the satisfaction of service recipients with service quality; and service outcomes for tribal child welfare programs and stakeholders. *The Center for Courts' evaluation* will assess satisfaction with and effectiveness of service delivery; progress toward meeting Center goals and the needs of CIP to promote continuous quality improvement (CQI); and increased knowledge, collaboration, and capacity to improve court performance and child and family outcomes.

Proposed *cross-Center evaluation data sources* for this effort include (1) a survey to assess child welfare staff perceptions of the outcomes of intensive¹ courses of tailored services

and their satisfaction with those services, completed by a project team lead with input from the rest of the team; (2) a survey to assess child welfare staff perceptions of the outcomes of brief courses of tailored services, for use with tribes and CIP;² (3,4,5) a leadership interview protocol, administered to all state/territory child welfare directors, and to tribal child welfare directors and CIP coordinators receiving services from the Centers; (6) a collaboration and communication survey administered twice to Center staff/contractors and their federal partners to understand whether factors that support collaboration are in place and improving over time; (7) a survey to assess whether collaborative teams for specific projects and/or communication teams exhibit signs of healthy collaboration; and (8) a survey to assess child welfare jurisdiction staff satisfaction with the assessment and work planning services provided by Centers.

Center for States' data sources include (1) a registration form for participation in virtual events; (2,3) a survey to gather feedback from participants in brief service events of 100+ registrants, and a follow-up survey to measure outcomes 3 months later; (4) a short poll for use by participants in brief service events with fewer than 100 registrants; (5) a peer learning group survey to gather feedback to inform program planning; (6) a survey to measure satisfaction with learning experiences; (7) a protocol for interviewing staff in jurisdictions receiving intensive services; (8) a protocol for use with state project leads to capture feedback following meetings associated with intensive projects, for use in a fidelity study; (9) a tailored services brief project survey to inform outcome reporting and CQI; (10) a survey of participants in peer-to-peer events to inform project planning; and (11) a jurisdiction interview protocol for a longitudinal ethnographic sub-study of several intensive projects. *Center for Tribes' data sources* include (1) a form for tribes requesting Center services; (2) an inquiry form for Center staff to collect information on services the tribe requests; (3) a demographic survey to provide information about the tribal child welfare program; (4) a "needs and fit exploration tool—phase 1" to gather information to decide if the tribe's request meets criteria for services; (5) a "needs and fit exploration tool—phase 2" for use when meeting with tribes whose service request has been

¹ Intensive services typically last 9 or more months and involve 20 or more hours of service.

² The Center for States will administer its own, similar survey for use with state respondents.

approved; (6,7) a Tribal Child Welfare Leadership Academy Self-Assessment (pre- and post-training versions); and (8) a feedback survey to measure satisfaction with Center webinars. *Center for Courts' data sources* include (1) a survey to assess the usefulness of CQI workshops and perceived knowledge gained from participating in them; (2) a survey to assess participant satisfaction with Judicial and Attorney Academies and perceived knowledge

gained; and (3) a pre-post survey to assess knowledge gained from the Academies and to provide exposure to material tailored to the participant's knowledge. *Respondents:* Respondents to the data collection instruments will include (1) child welfare and judicial professionals that use the Centers' web pages, products, and online courses; participate in virtual or in-person trainings or peer events; and/or receive

brief or intensive tailored services from the Centers; (2) state child welfare directors, tribal child welfare directors, and CIP coordinators receiving services from the Centers; (3) directors, staff, and consultants of the three Capacity Building Centers; and (4) federal staff.

Annual Burden Estimates

The proposed data collection will span 3 years.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Cross-Center: Outcomes of and Satisfaction with Tailored Services Survey (Intensive projects)—team lead's completion of survey	120	1	0.25	30	10
Cross-Center: Outcomes of and Satisfaction with Tailored Services Survey (Intensive projects)—input from other members of the team	576	1	0.17	98	33
Cross-Center: Outcomes of Tailored Services Survey (Brief projects)	150	1	0.05	8	3
Cross-Center: Leadership Interview—States and Territories	43	2	1	86	29
Cross-Center: Leadership Interview—CIPs	37	2	1	74	25
Cross-Center: Leadership Interview—Tribes	14	2	1.25	35	12
Cross-Center: Collaboration and Communication Survey—Center staff	200	1	0.22	44	15
Cross-Center: Collaboration Project Team Survey	120	1	0.23	28	9
Cross-Center: Assessment and Work Planning Survey—Jurisdiction Staff	130	1	0.15	20	7
Center for States: Event Registration	13,500	1	0.03	405	135
Center for States: Brief Event Survey	1,500	1	0.1	150	50
Center for States: Event Follow-up Survey	1,500	1	0.08	120	40
Center for States: Event Poll	300	1	0.03	9	3
Center for States: Peer Learning Group Survey	300	1	0.33	99	33
Center for States: Learning Experience Satisfaction Survey	975	1	0.33	322	107
Center for States: Jurisdiction Interview Protocol	90	1	1	90	30
Center for States: Fidelity Study: State Lead Debrief Questions	108	1	0.25	27	9
Center for States: Tailored Services Brief Project Survey ..	150	1	0.13	20	7
Center for States: Peer to Peer Event Survey	60	1	0.08	5	2
Center for States: Longitudinal Ethnographic Sub-study Jurisdiction Interview	45	2	1	90	30
Center for Tribes: Request for Services Form	100	1	1	100	33
Center for Tribes: Inquiry Form	200	1	0.08	16	5
Center for Tribes: ICW Demographic Survey	60	1	1.75	105	35
Center for Tribes: Needs and Fit Exploration Tool Phase 1	150	1	2	300	100
Center for Tribes: Needs and Fit Exploration Tool Phase 2 (Process Narrative)	80	1	3	240	80
Center for Tribes: Tribal Child Welfare Leadership Academy Pre-Training Self-Assessment	240	1	0.5	120	40
Center for Tribes: Tribal Child Welfare Leadership Academy Post-Training Self-Assessment	240	1	0.5	120	40
Center for Tribes: Universal Services Webinar Feedback Survey	400	1	0.08	32	11
Center for Courts: CQI Workshop Feedback Survey	240	1	0.07	17	6
Center for Courts: Academy Feedback Survey	600	1	0.07	42	14
Center for Courts: Pre/Post Academy Assessment	600	2	0.22	264	88

Estimated Total Annual Burden Hours: 1,041.

Authority: Sec. 5106, Public Law 111–320, the Child Abuse Prevention and Treatment

Act Reauthorization Act of 2010, and titles IV–B and IV–E of the Social Security Act.

Mary B. Jones,
ACF/OPRE Certifying Officer.
 [FR Doc. 2021-11118 Filed 5-25-21; 8:45 am]
BILLING CODE 4184-44-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited OMB Review: Low Income Household Water Assistance Program (LIHWAP) Plan (New Collection)

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting expedited review of an information collection request from the Office of Management and Budget (OMB) of the Low Income Household Water Assistance Program (LIHWAP) Plan. OCS solicited

comments in the form of the LIHWAP survey (approved under OMB #0970-0531), which was available on the LIWHAP webpage from Monday, April 19-Tuesday April 27. These comments were due prior to submission of this information collection request and have been addressed in the submission package to OMB. OCS will use information from the LIHWAP Plan to identify recipients, methods and categories for grantee expenditures, as well as to assess the effectiveness of grantee planning and compliance to terms and conditions for the LIHWAP.

DATES: Comments should be submitted as soon as possible upon publication of this notice in the **Federal Register**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by using the search function.

SUPPLEMENTARY INFORMATION:

Description: ACF is requesting that OMB grant a 180-day approval for this request under procedures for expedited processing. If OCS determines to need to continue use of the LIHWAP plan

beyond this initial 180-day approval period, a request for review under normal procedures will be submitted within 180 days of the approval for this request.

The LIHWAP is an emergency program intended to maintain continuity in water services for households with the lowest incomes that pay a high proportion of income for drinking water and waste water services. LIHWAP grantees have the flexibility to design certain policies and procedures related to the implementation of their LIHWAP programs in order to target the specific needs of their service population. The LIHWAP Plan will collect information related to each grantee's program design, including eligibility, benefit amounts, outreach, fiscal monitoring, etc. Grantees must report on program design and be approved prior to making payments on behalf of eligible households.

Respondents: LIHWAP Grantees, including States, Territories, and tribes that received a Low Income Household Energy Assistance Program (LIHEAP) grant award for Fiscal Year 2021.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
LIHWAP Plan	206	1	2	412

Estimated Total Annual Burden Hours: 412.

Grantees are required to submit one Plan that will cover their FY 2021 funding (including the American Rescue Plan funding) and covers the project period funded through September 30, 2023. Grantees will submit revised Plans if they make significant changes to their program during that project period. The two hour estimate includes potential revision(s) which are anticipated to be limited and quick in nature.

Authority: Sec. 533, Public Law 116-260.

Mary B. Jones,
ACF/OPRE Certifying Officer.
 [FR Doc. 2021-11162 Filed 5-21-21; 4:15 pm]
BILLING CODE 4184-80-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; System of Records

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with requirements of the Privacy Act of 1974, as amended, the HHS is updating an existing system of records maintained by HRSA's Bureau of Health Workforce (BHW), System No. 09-15-0037, HHS/HRSA/BHW Scholarship and Loan Repayment Program Records. The records in the system of records are about individuals who have applied for, are receiving, or have received awards under one of BHW's scholarship and loan repayment programs, as well as

individuals who indicate an interest in employment in or assignment to a medical facility located in a health professional shortage area or a medically underserved population area, incident to their participation in a BHW scholarship or loan repayment program.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable May 26, 2021, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by June 25, 2021.

ADDRESSES: Written comments may be submitted by mail, addressed to: ATTN: HRSA/BHW/OAA, 5600 Fishers Ln., Rockville, MD 20857, or by using this electronic contact method: <https://www.hrsa.gov/about/contact/bhwhelp.aspx>.

FOR FURTHER INFORMATION CONTACT: General questions about the revised system of records may be submitted by telephone to (800) 221-9393.

SUPPLEMENTARY INFORMATION: This system of records was last comprehensively updated in 2015. The primary reason for updating the system of records now is to add a new loan repayment program, the Substance Use Disorder (SUD) Treatment and Recovery Loan Repayment Program (STAR LRP), to the programs that are covered by this system of records and to clarify that the System of Records Notice (SORN) is intended to include records for all BHW LRP and Scholarship Program (SP) records (sometimes collectively referred to as “Program” or “Programs”). The modifications include:

- Updating contact information in the System Location and System Manager(s) sections.
- Adding a reference to the new loan repayment program, STAR, to the System Manager(s) section; the Purpose(s) section at 7; the Categories of Individuals section at 1; and in Routine Use 16 (formerly Routine Use 17).
- Adding a reference to two other programs not mentioned by name in the existing SORN, *i.e.*, the National Health Service Corps Rural Community (NHSC RC) LRP and the National Health Service Corps Substance Use Disorder (NHSC SUD) Workforce LRP, to the System Manager(s) section; the Purpose(s) section at 7; the Categories of Individuals section at 1; and in Routine use 16 (formerly Routine use 17).
- Clarifying in the Purpose(s) section at 2, in the Categories of Individuals section at 1, and in a revision to Routine Use 8 that the SORN covers records for all BHW loan repayment and scholarship “Programs” (*e.g.*, not just “above-identified Programs” but also any future programs).
- In the Authorities section, adding 42 U.S.C. 294h, which authorizes the new STAR LRP; and broadening the citation to 42 U.S.C. 254f to include additional sections which are applicable, *i.e.*, 42 U.S.C. 254d through 254h–1.
- Revising the Purpose(s) section to:
 - Merge former purpose description 10 with purpose description 4, so that 4 now describes both the debt servicing and debt collection purposes.
 - Reword the start of purpose description 10 (formerly 11) to read: “To provide information to the Assistant Secretary for Financial Resources . . .” (instead of: “To transfer information to System No. 09–90–0024, Unified Financial Management System . . .”).
 - Add a new purpose description at 11, *i.e.*, to use records to create datasets for the agency to use to evaluate and improve the Programs, to make available for outside researchers to use for research purposes and, in deidentified form, to make available to the public.
- Adding a short list of record categories at the start of the Categories of Records section.
- In the Record Source Categories section, spelling out the names of the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS); adding, after the System for Awards Management, “and any other relevant databases included in the Department of the Treasury’s Do Not Pay Working System;” adding the Department Education; and adding a paragraph at the end of the section, describing a BHW interconnection with the Department of Education’s National Student Loan Data system which Program participants have the option to use to provide BHW with information related to their applications.
- Revising the Routine Uses section to:
 - In the introduction to the Routine uses section, change “. . . and (b)(4) through (b)(11) . . .” to “. . . and (b)(4) through (b)(12) . . .” because (b)(12) is applicable to this system of records, due to adding Note 2 at the end of the section which gives notice as required by 31 U.S.C. 3711(e) that the disclosures to consumer reporting agencies permitted by 5 U.S.C. 552a(b)(12) are made from this system of records.
 - Remove, from the end of routine use 2, a redundant phrase that repeated part of the definition of a routine use (*i.e.*, a phrase stating that the use must be compatible with the purpose for which the records were collected); and change “litigation” to “litigation and other proceedings.”
 - Clarify, in routine use 6, that the contractors in underserved communities who are included as disclosure recipients are contractors supporting the Programs.
 - Broaden routine use 8 to replace “. . . who assist with the implementation of the above-identified Programs for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system, or improving Program operations” with “. . . who assist with the implementation of the Programs or in improving Program operations, when they need access to the records to provide the assistance.”
 - Broaden routine use 10 to include, after the reference to the System for Awards Management, “and any other relevant databases included in Treasury’s Do Not Pay Working System.”
 - Revise routine use 16 to refer to the new loan repayment program, STAR LRP, and the NHSC RC LRP and NHSC SUD Workforce LRP.
- Add new routine use 24, which authorizes disclosure of datasets containing identifiable data to approved outside researchers, subject to the restrictions stated in the routine use.
- Number the existing note at the end of the Routine Uses section as “Note 1;” reword the note without substantively changing it (*i.e.*, to change “debt management” to “debt servicing”); and update the name of the related system of records 09–90–0024 referenced in that note.
- Add a second note, numbered as “Note 2,” providing notice as required by Treasury statute 31 U.S.C. 3711(e) that records from this system of records are disclosed to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).
- Revising the Retrieval section to include address and Applicant/Participant ID number as personal identifiers used for retrieval, and to remove “characteristics,” because they would not be personal identifiers.
- Updating the Retention and Disposal section with new disposition schedule numbers in 2 and 3 and explaining, in 4, that the BHW Management Information System Solution (BMISS) is an information technology system and spelling out the name the National Archives and Records Administration.
- Updating the Safeguards section to include a new introduction and two additional administrative safeguards (ongoing security control audits and reviews, and security awareness training), and to remove a paragraph describing physical safeguards applicable to records at Papa Ola Lokahi (POL) in Hawaii, which included no different safeguards from those described earlier in the section as applying to the system of records.
- Revising the Record Access, Contesting Records, and Notification Procedures sections to:
 - Remove detailed in-person request procedures and to instead require requests to be in writing, without specifying different procedures for different submission methods.
 - Remove an unnecessary statement that telephone requests will not be honored (such requests would not be in writing).
 - Replace social security number (SSN) with “Applicant/Participant ID number” as an item of information that “should” be included in a request (*i.e.*, information that would be helpful to include as opposed to being mandatory to include).

Because some of these changes are significant, a report on the modified system of records was sent to OMB and Congress in accordance with 5 U.S.C. 552a(r).

Diana Espinosa,
Acting Administrator.

SYSTEM NAME AND NUMBER:

HHS/HRSA/BHW Scholarship and Loan Repayment Program Records, 09–15–0037.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for this system of records is:

- Health Resources and Services Administration/Bureau of Health Workforce, 5600 Fishers Lane, Rockville, MD 20857.

Addresses of third-party service providers assisting BHW:

- Arch Systems, LLC, 1800 Washington Blvd., Ste. 421, Baltimore, MD 21230.
- Publicis Sapient, 1515 N Courthouse Rd., 4th Fl., Arlington, VA 22201.

SYSTEM MANAGER(S):

The System Manager for the system of records is the following Policy-Coordinating Official: Director, Division of Policy and Shortage Designation, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857, (877) 464–4772 (TTY: (877) 897–9910).

Points of contact for specific scholarship programs and activities (SP) and loan repayment programs and activities (LRP), collectively referred to as Program or Programs:

- *For the National Health Service Corps Scholarship Program (NHSC SP), National Health Service Corps Loan Repayment Program (NHSC LRP), National Health Service Corps Students to Service Loan Repayment Program (NHSC S2S LRP), National Health Service Corps Substance Use Disorder Workforce Loan Repayment Program (NHSC SUD Workforce LRP), NHSC Rural Community LRP (NHSC RC LRP) and Substance Use Disorder Treatment and Recovery Loan Repayment Program (STAR LRP) Applications/Awards:* Director, Division of the National Health Service Corps, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857.

- *For Nurse Corps LRP, Nurse Corps SP, and Faculty Loan Repayment Program (FLRP) Applications/Awards:* Director, Division of Health Careers and Financial Support, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857, 1–877–464–4772 (TTY:1–877–897–9910).

- *For NHSC SP, NHSC LRP, NHSC S2S LRP, NHSC SUD Workforce LRP, NHSC RC LRP, FLRP, and STAR LRP:* Director, Division of Participant Support and Compliance, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857.

- *For Suspension/Waiver/Default Determination for all BHW Programs:* Chief, Legal and Compliance Branch, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857.

- *For Native Hawaiian Health Scholarship Program (NHHSP):* Administrator, Papa Ola Lokahi, 894 Queen St., No. 706, Honolulu, HI 96813.

- *For Student/Resident Experiences and Rotations in Community Health (SEARCH) and Ambassadors:* Director, Division of External Affairs, BHW, HRSA, 5600 Fishers Ln., Rockville, MD 20857.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These statutes authorize HHS/HRSA to maintain this system of records:

- 42 U.S.C. 254d through 254h–1 (Secs. 331 through 336 of the Public Health Service (PHS) Act, as amended).

- 42 U.S.C. 234 (Sec. 225 of the PHS Act, as in effect on September 30, 1977, Public Health National Health Service Corp (PH/NHSC) Scholarship Training Program).

- 42 U.S.C. 295g (Sec. 409(b) of the Health Professions Educational Assistance Act of 1976, Physician Shortage Area Scholarship Program (PSASP)).

- 42 U.S.C. 2541–q (Secs. 338A–H of the PHS Act, as amended, NHSC Scholarship and Loan Repayment Programs).

- 42 U.S.C. 254h–1(c) and 254d(b)(1) (Secs. 336(c) and 331(b)(1) of the PHS Act, Student/Resident Experiences and Rotations in Community Health (SEARCH)).

- 42 U.S.C. 297n (Sec. 846 of the PHS Act, as amended, Nurse Corps Loan Repayment Program and the Nurse Corps Scholarship Program).

- 42 U.S.C. 11709 (Sec. 10 of the Native Hawaiian Health Care Improvement Act, as amended, NHHSP).

- 42 U.S.C. 293b(a) (Sec. 738(a) of the PHS Act), Faculty Loan Repayment Program).

- 42 U.S.C. 3505d (Sec. 202 of Title II of Pub. L. 92–157, National Health Professional Shortage Clearinghouse).

- 31 U.S.C. 7701(c) (Debt Collection Improvement Act of 1996, Requirement That Applicant Furnish Taxpayer Identifying Number).

- 5 U.S.C. 3301 (pertaining to civil service employees) and 42 U.S.C. 216(a) (Sec. 215(a) of the PHS Act, as amended, pertaining to PHS commissioned

officers), both of which authorize verification of an individual's suitability for employment).

- 42 U.S.C. 295h (Sec. 781 of the Public Health Service Act), STAR LRP.

PURPOSE(S) OF THE SYSTEM:

Relevant agency personnel use records about individuals in this system of records on a need to know basis for the following purposes:

1. To obtain marketing and recruitment information concerning individuals who registered to complete an online application but did not submit or complete an application.

2. To identify and select qualified individuals to participate in any of the BHW Loan Repayment Programs (LRP) and Scholarship Programs (SP), including any future program.

3. To maintain records on and to verify program applicants' or participants' credentials and educational background, and previous and current professional employment data and performance history information to verify that all claimed background and employment data are valid and all claimed credentials are current and in good standing for selection for an award through the completion of service.

4. To assist the HHS Program Support Center (PSC) in servicing Program debts and to assist or obtain assistance from PSC, the Department of Justice (DOJ), and other government entities in the collection of Program debts that are disputed, defaulted, or delinquent.

5. To respond to inquiries from Program applicants and participants, their attorneys or other authorized representatives, and Congressional representatives.

6. To compile and generate managerial and statistical reports.

7. With respect to the PH/NHSC, NHSC SP, NHHSP, Nurse Corps SP, NHSC LRP, Nurse Corps LRP, FLRP, NHSC SUD Workforce LRP, and STAR LRP: (a) To select and match scholarship recipients, loan repayors, and other individuals for assignment to or employment with a health care or other facility appropriate to the Programs' purposes; (b) to perform loan repayment and scholarship program administrative activities, including, but not limited to, payment tracking, deferment of the service obligation, monitoring a participant's compliance with the service requirements, determination of service completion, review of suspension or waiver requests, default determinations, and calculation of liability upon default; and (c) to monitor the services provided by the Programs' health care providers.

8. With respect to the SEARCH Program: (a) To track recruitment of SEARCH participants for the NHSC Scholarship and Loan Repayment Programs; and (b) to determine how many non-obligated SEARCH participants ultimately practice primary health care in a Health Professional Shortage Area (HPSA).

9. With respect to the Ambassador and Alumni activities: (a) To advocate for more health professions students to choose primary care; (b) to mentor students and clinicians; and (c) to recruit students and clinicians for the NHSC Scholarship and Loan Repayment Programs, and to train community leaders and local clinicians to care about and for people in need.

10. To provide information to the HHS Office of the Assistant Secretary for Financial Resources for purposes of effecting payment of program funds (including through the Department of the Treasury) and preparing and maintaining financial management and accounting documentation related to obligations and disbursements of funds (including providing notifications to the Department of the Treasury) related to payments to, or on behalf of, awardees. Information provided to ASFR for these purposes is limited to the individual's name, address, SSN, and other information necessary to identify the individual, the funding being sought or amount of qualifying educational loans, and the program under which the awardee is being processed.

11. To create datasets for HHS to use to evaluate and improve the BHW loan repayment and scholarship programs, and for HHS to make available to the public or to approved outside researchers. Any datasets made available to the public would be de-identified, limited to information the disclosure of which would not constitute a clearly unwarranted invasion of personal privacy under the Freedom of Information Act. Identifiable datasets would be made available to approved researchers only, subject to restrictions, as described in routine use 24.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records contains records about the following categories of individuals:

1. Individuals who have applied for, who are receiving, or who have received awards under any BHW loan repayment programs (LRP) or scholarship programs (SP), including any new programs arising after publication of this SORN. Current programs, which may change over time, include: The National Health

Service Corps Scholarship Program (NHSC SP); the National Health Service Corps Loan Repayment Program (NHSC LRP); National Health Service Corps Students to Service Loan Repayment Program (NHSC S2S LRP); the National Health Service Corps Substance Use Disorder Workforce Loan Repayment Program (NHSC SUD Workforce LRP); the National Health Service Corps Rural Community Loan Repayment Program (NHSC RC LRP); the Nurse Corps Loan Repayment Program (Nurse Corps LRP); the Nurse Corps Scholarship Program (Nurse Corps SP); the NHHSP; the Faculty Loan Repayment Program (FLRP); and the Substance Use Disorder (SUD) Treatment and Recovery Loan Repayment Program (STAR LRP).

2. Individuals who have applied to participate, are participating, or have participated in the NHSC Student/Resident Experiences and Rotations in Community Health (SEARCH) Program.

3. Individuals who are current or former Ambassadors, Alumni, or Ready Responders.

4. Individuals who indicate an interest in employment in or an assignment to a medical facility located in a Health Professional Shortage Area (HPSA) or a medically underserved population area, including public and federal medical facilities, such as Bureau of Prisons medical facilities, Indian Health Service health care facilities, and other federally sponsored health care facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include scholarship and loan repayment applications, and associated forms, documents, reports, correspondence, and contracts, and expressions of interest, for all BHW scholarship programs and loan repayment programs, including those listed in the System Manager(s) section and any new programs not specifically listed.

Examples of particular records and data elements include: The individual's name, address(es), telephone number(s), email address(es), Social Security number (SSN); scholarship, loan repayment, Ambassadors, Alumni, Ready Responders or SEARCH application and associated forms/ documents, contracts, employment data, professional performance and credentialing history of licensed health professionals; preference for site-selection; personal, professional, and demographic background information; academic and/or service progress reports (which include related data, correspondence, and professional performance information consisting of continuing education, performance

awards, and adverse or disciplinary actions); commercial credit reports, educational data including tuition and other related education expenses; educational data including academic program and status; information concerning educational loans; employment status verification (which includes certifications and verifications of service obligation); medical data, financial data, payment data and related forms, deferment/placement/suspension/waiver data and supporting documentation; repayment/delinquent/default status information, correspondence to and from Program applicants and participants and/or their representatives, Claims Collection Litigation Reports for default cases referred to the DOJ.

RECORD SOURCE CATEGORIES:

Records are obtained directly from the subject individuals, or from the following sources: Educational institutions; internship and/or residency training programs; employers; NHSC-approved service sites; critical shortage facilities; schools of nursing; lending institutions and loan servicing agencies; health professional associations; National Practitioner Data Bank; the System for Awards Management and any other relevant databases included in the Department of the Treasury's Do Not Pay Working System (see <https://fiscal.treasury.gov/DNP/>); HHS Office of Inspector General website listing of individuals excluded from Medicare, Medicaid, and all other federal health care programs; HHS database of Health Professional Shortage Areas; HHS grantees and contractors/subcontractors; consumer reporting agencies/credit bureaus; other federal agencies, including but not limited to the Department of the Treasury (Treasury) and its Internal Revenue Service (IRS), the Department of Education, and the U.S. Postal Service; state health professions licensing boards and/or the Federation of State Medical Boards or a similar non-government entity; and third parties who provide references or other information concerning the subject individual.

Applicants/participants have the option to use a BHW interconnection with the Department of Education's National Student Loan Data System to import information related to their application. The interconnection provides data integrity and security for BHW and convenience for the applicants/participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures authorized by the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(b)(12), information about an individual may be disclosed from this system of records to parties outside HHS, without the individual's prior, written consent, for these routine uses:

1. HHS may disclose to a Member of Congress or to a Congressional staff member information from the record of an individual in response to a written inquiry from the Congressional office made at the written request of that individual.

2. HHS may disclose information from this system of records to the DOJ or to a court or other tribunal when:

- a. HHS, or any component thereof, or
- b. Any HHS employee in his or her official capacity, or
- c. Any HHS employee in his or her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee, or
- d. The United States Government, is a party to litigation or other proceedings and has an interest in such proceedings, and by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

3. In the event that a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether federal, state, local, Tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto, if the information is relevant to the enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity. This includes, but is not limited to, disciplinary actions by state licensing boards against current or former Program participants.

4. HHS may disclose information consisting of names, SSN, disciplines and/or medical specialties, current mailing addresses, dates of scholarship support, and dates of graduation of NHSC SP, Nurse Corps SP and NHHSP scholarship recipients to: (a) Designated coordinators at each health professions school participating in the scholarship program for the purpose of determining educational expenses and resulting

levels of scholarship support, and for the purpose of guiding and informing these recipients about the nature of their service obligation; and (b) schools attended by scholarship recipients who have taken a leave of absence from school, have terminated enrollment or been dismissed from school, or are repeating coursework, for the purpose of determining their academic status and whether their scholarship support should be suspended or resumed, as appropriate.

5. HHS may disclose information consisting of name, address, discipline and/or medical specialty, and SSN from this system of records to a Program participant's health professions school, residency program, or other postgraduate training program, for the purpose of ascertaining the participant's enrollment status and training completion or graduation date.

6. HHS may disclose records consisting of names, disciplines and/or medical specialties, current business or school mailing addresses, email addresses of the Programs' scholarship and loan repayment participants to contractors supporting the Programs, Ambassadors, Alumni, and professional organizations in underserved communities for the purpose of supporting these clinicians in the course of their service obligation in a HPSA, school of nursing, or critical shortage facility.

7. HHS or its contractors may disclose records consisting of a SEARCH participant's name, mailing address, email address, phone number, health professions school, residency training and specialty to state Primary Care Offices (PCOs) and Primary Care Associations (PCAs) and site representatives for the purpose of matching participants to potential employment sites.

8. HHS may disclose records consisting of a participant's name, SSN, mailing address, email address, phone number, health professions school, residency training, specialty, program status, award years, service start and end dates, and service site address and phone number to Department grantees, contractors and subcontractors who assist with the implementation of the Programs, or in improving Program operations, when they need access to the records to provide the assistance. Grantees and contractors maintain, and contractors are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

9. HHS may disclose biographical data and information supplied by Program applicants or participants: (a)

To references listed on the application and associated forms, for the purpose of evaluating the applicant's or participant's professional qualifications, experience, and suitability; (b) to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing; and (c) to prospective, current or former employers, or to site representatives, or to PCAs, and PCOs for the purpose of appraising the applicant's professional qualifications and suitability for site assignment or employment.

10. HHS may disclose an applicant's or participant's name, mailing address, email address, phone number, SSN, health professions school, residency training, and specialty to Department grantees, site representatives, contractors, and subcontractors who assist with the implementation of the above-identified Programs, for the purpose of recruiting, screening, evaluating, and matching, placing, or assigning health professionals to a service site appropriate to the relevant Program's purposes. In addition, Department grantees, contractors and subcontractors may disclose biographical data and information supplied by Program applicants, participants, or references listed on the application and associated forms: (a) To other references for the purpose of evaluating the applicant's or participant's professional qualifications, experience, and suitability; (b) to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing; (c) to the System for Awards Management and any other relevant databases included in Treasury's Do Not Pay Working System (see <https://fiscal.treasury.gov/DNP/>) for the purpose of determining whether applicants or participants are suspended, debarred, or disqualified from participation in covered transactions; (d) to the National Practitioner Data Bank for the purpose of determining whether applicants or participants have information on their reports; and (e) to prospective employers, or to site representatives, for the purpose of appraising the applicant's or participant's professional qualifications and suitability for site

assignment or employment. Grantees and contractors maintain, and contractors are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

11. HHS may disclose records consisting of name, mailing address, email address, phone number, SSN, specialty, and requested or actual placement site(s) to State Loan Repayment Grantees, state PCOs and PCAs, and site representatives to facilitate PCO, PCA and site activities related to recruitment and placement of Program participants at service sites. For the purpose of monitoring the program participant's compliance with the service obligation, including fact-finding to calculate service credit, to decide transfer requests, or to make default determinations, HHS may release to the participant's service site other information from the participant's file, including but not limited to, his/her allegations concerning conditions at the site, disputes with site management, or circumstances surrounding his/her resignation/termination.

12. HHS may disclose records to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning: (a) An individual's employment history; (b) the issuance, retention, suspension, revocation, or reinstatement of licenses or registrations necessary to practice a health professional occupation or specialty; (c) disciplinary action against the individual or other sanctions imposed by a state or local government licensing board; or (d) the individual's attempts to pass health professions licensure exam(s). This disclosure may include the applicant's or participant's name, address, SSN, employment history, educational data, accreditation, licensing, and professional qualification data, and facts concerning any clinical competence, unprofessional behavior, or substance abuse problem of which HHS is aware. The purposes of this disclosure are: (1) To enable HHS to obtain information relevant to a decision concerning a health professional's accomplishments, professional and personal background qualifications, experience, and any licensure sanctions related to substance abuse, to determine the individual's suitability for employment, retention, or termination as a health services provider at a health care facility approved by the relevant Program; and (2) to inform health professions licensing boards or the appropriate non-government entities about the health

care practices or conduct of a practicing, terminated, resigned, or retired health services provider whose professional conduct so significantly failed to conform to generally accepted standards of professional practice for health care providers as to raise reasonable concern for the health and safety of patients.

13. HHS may disclose information consisting of name, address, SSN, health professions license number, and place of employment from this system of records to federal, state, or local health agencies and law enforcement regarding a program participant who has a physical or mental condition that is, or has the potential to become, a risk to patients or to the public at large, or whose aberrant behavior poses such a risk (e.g., commission of a sexual assault, illegal use or distribution of narcotics).

14. HHS may disclose information consisting of name, address, SSN, health professions license number, and place of employment to a state or local government agency, including any agent thereof, maintaining criminal, civil, or administrative violation records, or other pertinent information such as records regarding the investigation or resolution of allegations involving a program participant. The purpose of this disclosure is to enable HHS to monitor compliance with program requirements and make determinations regarding administrative actions or other remedies, including default determinations.

15. HHS may disclose Ambassador information consisting of name, email and social network address(es), phone number(s), employment information, and professional biographies to current and prospective participants in BHW programs and other interested individuals. The purpose of this disclosure is to allow these individuals to contact Ambassadors who serve as mentors and local resources for the NHSC programs.

16. HHS may disclose information about applicants or participants in relevant Programs, including, for example, the NHSC LRP (e.g., LRP, S2S LRP, SUD Workforce LRP, and RC LRP); Nurse Corps LRP; FLRP; and STAR LRP, to lending institutions and loan servicing agencies for the purpose of obtaining payoff balances on educational loans and determining whether loans are eligible for repayment under the applicable Program. Disclosure will be limited to the applicant/participant's name, address, SSN, the loan account number(s), the pre-verified loan balance, account status, and other information necessary to identify the LRP applicant/

participant and his/her loans for this purpose.

17. HHS may disclose information to the IRS about an individual applying under the above-identified Programs to find out whether the applicant has a delinquent tax debt. This disclosure is for the sole purpose of determining the applicant's eligibility for funding and/or creditworthiness and is limited to the individual's name, address, SSN, other information necessary to identify him/her, and the program for which the information is being obtained.

18. HHS may disclose information from this system of records to another federal, state, or local agency or private employer to whom a Program defaulter has applied for federal grant funds, federal scholarship, loan, or loan repayment funds, or employment involving federal funds, for the purpose of ensuring that the Program defaulter does not receive federal funds for which he/she is ineligible. Disclosure will be limited to the defaulter's name, address, SSN, inclusion on the Do Not Pay List, and any other information necessary to identify him/her.

19. HHS may disclose information from this system of records to the DOJ and applicable state agencies in order to exclude a debtor from all federal health care programs, as defined in 42 U.S.C. 1320a-7b(f), including Medicare and Medicaid, or to conclude a settlement agreement staying such an exclusion.

20. HHS may disclose information from this system of records to other federal, state, and local agencies, and public and private entities that provide scholarship and/or loan repayment funding or include bonus clauses in employment contracts, for the following purposes: (a) To curtail fraud and abuse of federal funds by identifying individuals who have applied for, or accepted, funding from another source for performance of the same service; and (b) to determine if an applicant has an existing service obligation to another federal, state, local, or other entity.

21. HHS may disclose to federal, state, and local agencies, and public and private non-profit entities for research purposes, the name, address(es), SSN, discipline and service sites of applicants and participants in the above-identified Programs when the Department:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that a bona fide research/analysis purpose exists;

c. has required the recipient to (1) establish strict limitations concerning the receipt and use of applicant- and

participant-identified data; (2) establish reasonable administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record; (3) remove, destroy, or return the information that identifies the applicant or participant at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research nature for retaining such information; and (4) make no further use or disclosure of the record except as authorized by HHS or when required by law; and

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

22. Disclosure may be made in response to a subpoena from another federal agency having the power to subpoena other agencies' records, such as the IRS or U.S. Commission on Civil Rights.

23. Disclosure of information from this system of records may be made to the HHS/PSC/Federal Occupational Health contract physicians to review and provide a written opinion of the medical documentation submitted by scholarship and loan repayment Program participants seeking a suspension or waiver of their service or payment obligation.

24. HHS may disclose individually-identifiable records from this system of records, in the form of restricted datasets, to outside researchers for research purposes, when (a) HHS has determined that the use or disclosure does not violate legal or policy requirements, (b) HHS has determined that the research purpose cannot be reasonably accomplished unless the records are provided in individually-identifiable form, and warrants the risk to the privacy of the individuals which additional exposure of the record might bring; (c) HHS has required the recipient to establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records, and to remove or destroy the identifiable information at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information.

25. Disclosure to the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS

cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

26. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

27. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

Note 1: Because, as described in the Purposes section, certain records in this system of records are included in other systems of records used by HHS offices that handle related financial management and debt servicing and collection functions, the SORNs covering those systems of records should be consulted for additional routine use disclosures that may be made without the individual's consent. See HHS Financial Management System Records, System No. 09-90-0024, and Debt Management and Collection System, System No. 09-40-0012.

Note 2: This Note provides notice, as required by 31 U.S.C. 3711(e), that, pursuant to the authorization in 5 U.S.C 552a(b)(12), HHS may disclose information from this system of records, without the subject individuals' consent, to a consumer reporting agency, as defined in 31 U.S.C. 3701(a)(3). Disclosure purposes include:

a. To obtain a commercial credit report to assess the creditworthiness of a scholarship or loan repayment applicant;

b. To verify information provided on the scholarship or loan repayment application concerning whether the

applicant has ever defaulted on a federal or non-federal obligation, or had delinquent federal or non-federal debts or judgment liens;

c. To determine and verify the eligibility of loans submitted for repayment;

d. To assess and verify ability of a debtor to repay debts owed to the federal government; and

e. To provide an incentive for debtors to repay federal debts by making these debts part of their credit records.

Pursuant to 31 U.S.C. 3711(e)(1)(F), the information disclosed to the consumer reporting agency is limited to (i) information necessary to establish the identity of the person, including name, address, and taxpayer identification number; (ii) the amount, status, and history of the claim; and (iii) the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic database servers and backup servers, file folders, and for NHHSP records, a backup hard drive.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an individual's name, address, SSN, or Applicant/Participant ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of as follows:

1. Files concerning participants who complete their obligations or whose obligations are waived, cancelled, or terminated are transferred to the Washington National Records Center in Suitland, MD and are destroyed 6 years after final payment, under disposition schedule HSA B-351 3. 1.

2. HRSA has digitized and uploaded paper files concerning active participants in BHW scholarship and loan repayment programs into the BMISS. The paper files are stored at the Washington National Records Center and are destroyed 15 years after closeout, under disposition schedule DAA-0512-2014-0004-0056.

3. Unfunded or withdrawn applicant records are destroyed 6 months after the close of each fiscal year application period, under disposition schedule DAA-0512-2014-0004-0057.

4. Currently, all records migrated to the BMISS information technology (IT) system or created in BMISS are retained indefinitely, pending the National Archives and Records Administration's approval of a revised disposition schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These safeguards apply to the records at all locations, including at Papa Ola Lokahi (POL), an entity which collaborates with HRSA/BHW in the administration of the NHHSP through a Cooperative Agreement to assist with the implementation of the NHHSP:

a. Administrative Safeguards:

- Authorized Users: Password-protected access is limited to persons authorized and needing to use the electronic records, which includes system managers and their staff, BHW headquarter officials and staff, HRSA Division of Regional Operations staff, financial and fiscal management personnel, Office of the General Counsel personnel, Office of Information Technology personnel, and POL personnel.

• Additional Authorized Users:

Password-protected access is also provided to applicants, participants, and service sites for the purpose of inputting data, uploading documents, or submitting queries through BMISS.

- Security controls are audited and reviewed on an ongoing basis, and security awareness training is conducted at least annually.

b. Technical safeguards:

- Encryption, intrusion detection, and firewalls are utilized. Scans are run against the BMISS platform for web and architecture vulnerabilities. Complex or strong passwords are required and must be changed frequently.

c. Physical Safeguards:

- Rooms where records are located are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the offices (storage locations) after duty hours, including weekends and holidays.

- Servers and other computer equipment used to process identifiable data are located in secured areas which use physical access control devices (e.g., keys, locks, combinations, card readers) and/or security guards to control entries into the facility. All facilities housing HRSA information systems maintain fire suppression and detection devices or systems (e.g., sprinkler systems, handheld fire extinguishers, fixed fire hoses, and or smoke detectors) that can be activated in the event of a fire.

RECORD ACCESS PROCEDURES:

To request access to a record about you, submit a written access request to the Policy-Coordinating Official identified in the "System Manager" section of this SORN, who will refer

your request to the appropriate Point of Contact for the program/activity. The request must contain your full name, address, and signature, and should also include the name of the Program(s) in which you participated (or applied but were not selected) and current status (e.g., in training, in deferment, in service, or in default), and Applicant/Participant ID number. To verify your identity, your signature must be notarized or the request must include your written certification that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to \$5,000. You may request that copies of the records be sent to you, or you may request an appointment to review the records in person (including with a person of your choosing, if you provide written authorization for agency personnel to discuss the records in that person's presence). You may also request an accounting of disclosures that have been made of records about you, if any.

CONTESTING RECORDS PROCEDURES:

To request correction of a record about you in this system of records, submit a written amendment request to the Policy-Coordinating Official identified in the "System Manager" section of this SORN, who will refer your request to the appropriate Point of Contact for the program/activity. The request must contain the same information required for an access request and include verification of your identity in the same manner required for an access request. In addition, the request must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

To find out if the system of records contains records about you, submit a written notification request to the Policy-Coordinating Official identified in the "System Manager" section of this SORN who will refer your request to the appropriate Point of Contact for the program/activity. The request must contain the same information required for an access request, and must include verification of your identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 18631 (Apr. 7, 2015), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2021-11152 Filed 5-25-21; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Office of the Director, National Institutes of Health; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Novel and Exceptional Technology and Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

Name of Committee: Novel and Exceptional Technology and Research Advisory Committee.

Date: June 25, 2021.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: The Novel and Exceptional Technology and Research Advisory Committee (NEXTRAC) will discuss the Draft Report of the Gene Drives in Biomedical Research Working Group and next steps for the Committee.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892 (Virtual Meeting—Link for the meeting will be available at <https://osp.od.nih.gov/biotechnology/main-nextrac/#meetings>).

Contact Person: Kinshasa Letts, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301-496-9838, SciencePolicy@od.nih.gov.

To sign up to make an oral public comment, please submit your name, affiliation, and short description of the oral comment to the Contact Person listed above by 5:00 p.m. EDT, June 21, 2021. Sign up will be restricted to one sign up per email and oral comments will be limited to two minutes. Once all time slots are filled, only written comments will be accepted. Any interested person may file written comments by forwarding their statement to the Contact Person listed on this notice. The Contact Person should receive any written statements by 5:00 p.m. EDT, June 23, 2021.

Information is also available on the NEXTRAC web page: <https://osp.od.nih.gov/biotechnology/main-nextrac/#meetings>,

where an agenda and any additional information for the meeting will be posted when available. The Draft Report of the Gene Drives in Biomedical Research Working Group will be posted prior to the meeting. Please check this website for updates.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 20, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11105 Filed 5-25-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Study Section—B Review of Predoctoral Training Grant Applications.

Date: May 26, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20814, (301) 435-0965, newmanla2@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11128 Filed 5-25-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: June 24–25, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301-435-1715, ngan@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: HEALThy Brain and Child Development Study Research Project Sites (U01).

Date: June 25, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301-379-5632, hfriedman@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assays, Diagnostics, Instrumentation and Interventions.

Date: June 28–29, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301-408-9098, josephru@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: High Throughput Screening.

Date: June 28, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301-435-2902, filpuladr@mail.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: June 28–30, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213-9887, hamelinc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Immunology Panel A.

Date: June 28–29, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shahrooz Vahedi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 810G, Bethesda, MD 20892, 301-496-9322, vahedis@mail.nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: June 28–29, 2021.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, bloommm2@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 20, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11107 Filed 5–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Early Phase Clinical Trial Units (EPCTU): Task Area C/Sample Task Order C (N01).

Date: June 22, 2021.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G62A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G62A, Rockville, MD

20852, (240) 669–5081, ecohen@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 21, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11126 Filed 5–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Skeletal Biology Development and Disease Study Section, June 9, 2021, 10:00 a.m. to June 11, 2021, 5:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 07, 2021, 86 FR 24635.

The meeting end time has changed from 5:00 p.m. to 8:30 p.m. The meeting is closed to the public.

Dated: May 21, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11127 Filed 5–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, July 14, 2021, 11:00 a.m. to July 14, 2021, 2:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, which was published in the **Federal Register** on May 20, 2021, 86 FR 27458.

This meeting notice is amended to change the meeting end time. The meeting will now be held from 11:00 a.m. to 3:00 p.m. on July 14, 2021. The meeting will be held as a virtual meeting and is open to the public.

Dated: May 20, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11106 Filed 5–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 21–09]

Tuna Tariff-Rate Quota for Calendar Year 2021 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2021.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding calendar year. This document sets forth the tariff-rate quota for Calendar Year 2021.

DATES: The 2021 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2021 through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Chief, Quota and Agricultural Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, at (202) 384–8905 or by email at HQQUOTA@cbp.dhs.gov.

Background

It has been determined that 18,345,004 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during Calendar Year 2021, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5

percent *ad valorem* under subheading 1604.14.30, HTSUS.

Dated: May 21, 2021.

John P. Leonard,

*Acting Executive Assistant Commissioner,
Office of Trade.*

[FR Doc. 2021-11164 Filed 5-25-21; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS-2020-0044]

Agency Information Collection

Activities: Post-Award Contract, DHS Form 700-23, 700-26

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension without change of a currently approved collection, 1600-0003.

SUMMARY: The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on Friday, November 20, 2020 for a 60-day public comment period. No comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until June 25, 2021. This process is conducted in accordance with 5 CFR 1320.1.

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: The Department of Homeland Security (DHS) collects information, when necessary, in administering public contracts for supplies and services. The information is used to determine compliance with contract terms placed in the contract as authorized by the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), and the Homeland Security Acquisition Regulation (HSAR) (48 CFR Chapter 30). Respondents submit information based on the terms

of the contract; the instructions in the contract deliverables mandatory reporting requirements; and correspondence from acquisition personnel requesting post-award contract information. The least active contracts and the simplest contracts will have little to no data to report. The most active and complex contracts, however, will contain more reporting requirements. DHS believes that some of this information is already readily available as part of a company's business processes and that the largest businesses use computers to compile the data. However, a significant amount of time is spent correlating information to specific contract actions and gathering information for more complex contract actions.

The prior information collection request for OMB No. 1600-0003 was approved through May 31, 2022 by OMB, and includes the following:

- 3052.204-70 Security requirements for unclassified information technology resources. (*Required in all solicitations and contracts that require submission of an IT Security Plan.*) This clause applies to all contractor systems connected to a DHS network and those contracts where the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems. The contractor is asked to prepare, provide and maintain an IT Security Plan.

- 3052.204-71 Contractor employee access. (*Required when contractor employees require recurring access to Government facilities or access to sensitive info.*) Contractors may be subject to background investigations and will have to provide information as required by the DHS Security Office. The information requested is in addition to the information requested through Standard Form (SF) 86.

- 3052.205-70 Advertisements, Publicizing Awards, and Releases. (*Required for all contracts exceeding Simplified Acquisition Threshold.*) Contractors may have to provide copies of information related to advertisements and release statements to receive approval for publication.

- 3052.209-72 Organizational Conflict of Interest, paragraphs (f) and (g) (*Included in solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible.*) Contractors will have to provide information related to actual or potential conflicts of interest and a mitigation plan.

- 3052.209-75 Prohibited Financial Interests for Lead System Integrators. (*Required in solicitations and contracts*

for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator or when the contractor will be the lead system integrator.) Contractors will have to provide information related to changes in financial interests.

- 3052.209-76 Prohibition on Federal Protective Service Guard Services Contracts with Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony, paragraph (h). (*Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Pub. Law 110-356, generally prohibits DHS from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.*) The notification required by paragraph (h) applies to any contractual instrument that may result in the issuance of task orders.

Contractors will have to provide information on any felony conviction of personnel who own, control or operate a business during the performance a contract.

- 3052.215-70 Key personnel or facilities. (*Required in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities.*) Contractors will have to provide notice of and documentation related to changes in key personnel for evaluation, including, resumes; description of the duties the replacement will assume; description of any change in duties and confirmation that such change will not negatively impact contract performance.

- 3052.216-71 Determination of Award Fee. (*Required in solicitations and contracts that include an award fee.*) Contractor may submit a performance self-evaluation for each evaluation period.

- 3052.217-91 Performance (USCG). (*Required in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. Also required in negotiated solicitations and contracts to be performed outside the United States.*) Contractor must request prior approval to conduct dock and sea trials.

- 3052.217-92 Inspection and Manner of Doing Work (USCG). (*Required in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. Also required in negotiated solicitations*

and contracts to be performed outside the United States.) Contractor must maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

- 3052.217–95 Liability and Insurance (USCG). (*Required in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. Also required in negotiated solicitations and contracts to be performed outside the United States.*) Contractor shall provide evidence of the insurance and give the Contracting Officer written notice after the occurrence of a loss or damage for which the Government has assumed the risk. If any loss or damage will result in a claim against the Government, the contractor shall provide notice.

- 3052.219–70 Small Business subcontracting plan reporting. (*Generally included in solicitations and contracts that offer subcontracting possibilities and are expected to exceed \$700,000*) Contractors must use Electronic Subcontracting Reporting System (eSRS) to submit subcontracting reporting data.

- 3052.219–71 DHS Mentor-Protégé Program. (*Included in solicitations where subcontracting plans are anticipated*) The amount of credit given to a contractor mentor firm for protégé developmental assistance costs must be calculated on a dollar for dollar basis and reported in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov.

- 3052.222–70 Strikes or Picketing Affecting Timely Completion of the Contract Work. (*Generally included in solicitations and contracts*) Contractor must take all reasonable and appropriate action to end a strike or picketing. Delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes. The contractor may be required to submit information to the contracting officer.

- 3052.222–71 Strikes or Picketing Affecting Access to a DHS Facility. (*Generally included in solicitations and contracts*) Contractor is responsible if strike or picketing is directed at the

Contractor and impedes access by any person to a DHS facility. Contractor must take all reasonable and appropriate action to end a strike or picketing. The contractor may be required to submit information to the contracting officer.

- 3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits. (*Required in solicitations and contracts involving the removal or disposal of hazardous waste material*) Contractors will have to provide evidence of licenses and permits to perform hazardous substance removal.

- 3052.223–90 Accident and Fire Reporting (USCG). (*Included in solicitations and contracts involving the removal of hazardous waste material*) Contractor must report incidents involving fire or accidents at a worksite. Contractors may provide this information using a state, private insurance carrier, or Contractor accident report form.

- 3052.228–91 Loss of or Damage to Leased Aircraft (USCG). (*Included in any contract for the lease of an aircraft*) In the event of loss of or damage to an aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor must promptly assign such rights in writing to the Government.

- 3052.228–93 Risk and Indemnities (USCG). (*Included in any contract for the lease of an aircraft*) Requires the contractor to provide the Government with evidence of insurance.

- 3052.235.70 Dissemination of Information-Educational Institutions. (*Included in contracts with educational institutions for research that are not sensitive or classified*) Contractors must provide advanced electronic copies of articles to the Government covering the results of research it plans to publish.

The purpose of this collection revision is to add, for purposes of entering into other transaction agreements pursuant to 6 U.S.C. 391, 6 U.S.C. 596(1), and 49 U.S.C. 106(l)(6), Form 700–26, Other Transaction Agreement, and Form 700–23, Other Transaction Agreement Modification. On the forms, respondents submit an Employer Identification Number, as well as the business' name, address and title. Respondents must also identify the authorized business representative's personal name, and must include a signature.

The information requested is used by the Government's contracting officers and other acquisition personnel, including technical and legal staff, for various reasons such as (1) determining the suitability of contractor personnel

accessing DHS facilities; (2) to ensure no organizational conflicts of interest exist during the performance of contracts; (3) to ensure the contractor maintains applicable licenses and permits for the removal and disposal of hazardous materials; and (4) to otherwise ensure firms are performing in the Government's best interest. Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors.

Many sources of the requested information use automated word processing systems, databases, spreadsheets, project management and other commercial software to facilitate preparation of material to be submitted. With Government-wide implementation of e-Government initiatives, it is commonplace within many of DHS's Components for submissions to be electronic.

Information collection may or may not involve small business contractors, depending on the particular transaction. The burden applied to small businesses is the minimum consistent with the objective of ensuring contract compliance and protecting the interest of the Government.

Less frequent incidence of collecting such information as resumes indicating the level of contractor expertise, permits and licenses, and inspection reports will negatively affect the quality of products and services DHS receives from contractors. Potentially, contractors could perform on contracts without sufficient experience and expertise and could perform contracts with outdated licenses and negative inspection reports, placing the Department's operations in jeopardy. Additionally, less frequent collection of information related to organizational conflicts of interest inhibit DHS from determining the existence of true conflicts of interest during the performance of contracts.

Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. For example, potentially, contractors who are lead system integrators could acquire direct financial interests in major systems the contractors are contracted to procure, which would compromise the integrity of acquisitions for the Department. In addition, contractors who own, control or operate a business providing protective guard services could possess felony convictions during the performance of contracts, putting the Department at risk. Furthermore, contractors could change key personnel during the performance of contracts and use less experienced or less qualified personnel to reduce costs, which would

adversely affect DHS's fulfillment of its mission requirements.

Disclosure/non-disclosure of information is handled in accordance with the Freedom of Information Act, other disclosure statutes, and Federal and agency acquisition regulations.

The burden estimates provided above are based upon definitive contract award data reported by DHS and its Components to the Federal Procurement Data System (FPDS) for FY 2019. No program changes occurred; however, the burden was adjusted to reflect a decrease in the number of respondents within DHS for FY 2019 in the amount of 6,612, as well as a decrease in the average hourly wage rate.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Post-Award Contract.

OMB Number: 1600-0003.

Frequency: On occasion.

Affected Public: Private Sector.

Number of Respondents: 6015.

Estimated Time per Respondent: 4.5.

Total Burden Hours: 90,812.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2021-11067 Filed 5-25-21; 8:45 am]

BILLING CODE 9112-FL-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**[212A2100DD/AAKC001030/
AOA501010.999900; OMB Control Number
1076-0182]**

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Sovereignty in Indian Education Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 25, 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 Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to: Spike Bighorn, Program Manager, Office of Sovereignty in Indian Education (SIE), Bureau of Indian Education, 200 NW 4th Street, Suite 4049, Oklahoma City, OK 73102 or by email to spike.bighorn@bie.edu. Please reference OMB Control Number 1076-0182 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Spike Bighorn by email at spike.bighorn@bie.edu, or by telephone at (202) 499-0482. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting

comments on this collection of information was published March 12, 2021 (86 FR 14152). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how might BIA minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Indian Tribes and Tribal Organizations may submit proposals to support their efforts to take control and operate BIE-funded schools located on the Tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant.

Title of Collection: Sovereignty in Indian Education Grant Program.

OMB Control Number: 1076-0182.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and/or Tribal Education Departments.

Total Estimated Number of Annual Respondents: 11 per year.

Total Estimated Number of Annual Responses: 198 per year.

Estimated Completion Time per Response: Ranges from 1 hour to 40 hours.

Total Estimated Number of Annual Burden Hours: 682 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Proposals and Annual reports once per year and Budget Reports are submitted 4 times per year.

Total Estimated Annual Nonhour Burden Cost: \$0.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–11090 Filed 5–25–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030//
AOA501010.999900; OMB Control Number
1076–0120]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Bureau of Indian Education Adult Education Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 25, 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 Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to: Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW, MS 3609–MIB, Washington, DC 20240; or by email to Juanita.Mendoza@bie.edu. Please reference OMB Control Number 1076–0120 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Juanita Mendoza by email at Juanita.Mendoza@bie.edu, or by telephone at (202) 208–3559. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published March 4, 2021 (86 FR 12709). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how might BIA minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of

public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIE is seeking renewal of the approval for the information collection conducted under 25 CFR part 46 to manage program resources and for fiscal accountability and appropriate direct services documentation. This information includes an annual report form.

Title of Collection: Bureau of Indian Education Adult Education Program.

OMB Control Number: 1076–0120.

Form Number: BIA 62123.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals (Tribal Adult Education Program Administrators).

Total Estimated Number of Annual Respondents: 70 per year, on average.

Total Estimated Number of Annual Responses: 70 per year, on average.

Estimated Completion Time per Response: 4 hours.

Total Estimated Number of Annual Burden Hours: 280 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: \$200.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–11092 Filed 5–25–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs**

[212A2100DD/AAKC001030/
AOA501010.999900; OMB Control Number
1076-0172]

**Agency Information Collection
Activities; Submission to the Office of
Management and Budget for Review
and Approval; Class III Tribal-State
Gaming Compact Process**

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, we,
the Office of the Assistant Secretary—
Indian Affairs, are proposing to renew
an information collection.

DATES: Interested persons are invited to
submit comments on or before June 25,
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 Review—Open for
Public Comments” or by using the
search function. Please provide a copy
of your comments to: Ms. Paula Hart,
U.S. Department of the Interior, Office
of Indian Gaming, 1849 C Street NW,
Mail Stop 3543, Washington, DC 20240;
email: Paula.Hart@BIA.gov. Please
reference OMB Control Number 1076-
0172 in the subject line of your
comments.

FOR FURTHER INFORMATION CONTACT: To
request additional information about
this ICR, contact Ms. Paula Hart,
telephone: (202) 219-4066. You may
also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In
accordance with the Paperwork
Reduction Act of 1995, we provide the
general public and other Federal
agencies with an opportunity to
comment on new, proposed, revised,
and continuing collections of
information. This helps us assess the
impact of our information collection
requirements and minimize the public’s
reporting burden. It also helps the
public understand our information
collection requirements and provide the
requested data in the desired format.

A **Federal Register** notice with a 60-
day public comment period soliciting
comments on this collection of
information was published March 26,

2021 (86 FR 16234). No comments were
received.

As part of our continuing effort to
reduce paperwork and respondent
burdens, we are again soliciting
comments on the proposed ICR that is
described below. We are especially
interested in public comment
addressing the following issues: (1)
Whether or not the collection of
information is necessary for the proper
performance of the functions of the
agency, including whether or not the
information will have practical utility;
(2) the accuracy of our estimate of the
burden for this collection of
information, including the validity of
the methodology and assumptions used;
(3) ways to enhance the quality, utility,
and clarity of the information to be
collected; and (4) how might BIA
minimize the burden of the collection of
information on those who are to
respond, including through the use of
appropriate automated, electronic,
mechanical, or other technological
collection techniques or other forms of
information technology, e.g., permitting
electronic submission of response.
Comments that you submit in response
to this notice are a matter of public
record. Before including your address,
phone number, email address, or other
personal identifying information in your
comment, you should be aware that
your entire comment—including your
personal identifying information—may
be made publicly available at any time.
While you can ask us in your comment
to withhold your personal identifying
information from public review, we
cannot guarantee that we will be able to
do so.

Abstract: The Office of the Assistant
Secretary—Indian Affairs is seeking
renewal of the approval for the
information collection conducted under
25 CFR 293, Class III Tribal-State
Gaming Compact Process and the Indian
Gaming Regulatory Act (IGRA), 25
U.S.C. 2710(d)(8)(A), (B) and (C), which
authorizes the Secretary to approve,
disapprove or “consider approved” (i.e.,
deemed approved) a Tribal-state gaming
compact or compact amendment and
publish notice of that approval or
considered approval in the **Federal
Register**. The information collected
includes Tribal-state compacts or
compact amendments entered into by
Indian Tribes and State governments.
The Secretary of the Interior reviews
this information and may approve,
disapprove or consider the compact
approved.

Title of Collection: Class III Tribal-
State Gaming Compact Process.

OMB Control Number: 1076-0172.

Form Number: None.

Type of Review: Extension without
change of currently approved collection.

Respondents/Affected Public: Indian
Tribes and State governments.

**Total Estimated Number of Annual
Respondents:** 40 per year.

**Total Estimated Number of Annual
Responses:** 40 per year.

**Estimated Completion Time per
Response:** 200 hours.

**Total Estimated Number of Annual
Burden Hours:** 8,000 hours.

Respondent’s Obligation: Required to
obtain a benefit.

Frequency of Collection: One time.

**Total Estimated Annual Nonhour
Burden Cost:** \$0.

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 authority for this action is the
Paperwork Reduction Act of 1995 (44
U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

*Director, Office of Regulatory Affairs and
Collaborative Action—Indian Affairs.*

[FR Doc. 2021-11091 Filed 5-25-21; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR**Office of the Secretary**

[212D0102DM, DS6CS00000,
DLSN00000.000000, DX6CS25; OMB Control
Number 1090-NEW]

**Agency Information Collection
Activities; Submission to the Office of
Management and Budget for Review
and Approval; Watercraft Inspection
and Decontamination Regional Data-
Sharing for Trailered Boats**

AGENCY: Department of the Interior.

ACTION: Notice of information collection;
request for comments.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, the
Department of the Interior (Interior), is
proposing a new information collection.

DATES: Interested persons are invited to
submit comments on or before June 25,
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. To find this information
collection, select “Currently Under
Review—Open for Public Comments” or
by using the search function. Please
provide a copy of your comments to Mr.
Jeffrey Parrillo, Departmental

Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or via email to DOI-PRA@ios.doi.gov. Please reference “OMB Control Number 1090–WID Database” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request, please contact Jeffrey Parrillo by email at DOI-PRA@ios.doi.gov, or by telephone at (202) 208–7072. Individuals who are hearing impaired may call the Federal Relay Service at (800) 877–8339 for TTY assistance. You may also view the information collection request at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On December 3, 2020, we published in the **Federal Register** (85 FR 78146) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on February 1, 2021. We received one comment during the 60-day public comment period, however it did not address the information collection requirements. Therefore, no response is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed information collection request that is described below. We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Interior is authorized by the Lacey Act (18 U.S.C. 42, 16 U.S.C. 3371–3378 *et seq.*), the Fish and Wildlife Coordination Act (U.S.C. 661 *et seq.*, as amended by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Title 25 U.S.C. 3701, *et seq.* sec. 7001(b)(2), Pub. L. 116–9) and the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701, *et seq.*, to collect this information. Interior is requesting approval to collect information from boaters entering or exiting water areas managed by various bureaus under Interior. The data will help document the presence and evaluate any risks associated with the unintentional introduction of quagga/zebra mussels and other aquatic invasive species in waters managed by the various bureaus under Interior. Collection of this information is required for all watercrafts entering and exiting waters managed by the various bureaus under Interior that have an active watercraft inspection and decontamination program.

The Regional Watercraft Inspection Decontamination Data Sharing System (Regional Database) was developed by the State of Colorado and is currently being utilized by numerous entities within the Western Regional Panel on Aquatic Nuisance Species (WRP). The National Park Service (NPS), U.S. Fish and Wildlife Service, Bureau of Reclamation, and Bureau of Land Management are part of the WRP and the regional network of state and federal agencies working to prevent the spread of quagga/zebra mussels and other aquatic invasive species (AIS) in the western U.S. The success of this multi-agency effort relies in part upon timely availability of accurate information related to trailered boats at watercraft inspection/decontamination (WID)

stations. The NPS already has OMB approval to use the Regional Database under OMB Control No. 1024–0285, but that collection will be discontinued and NPS will be rolled into this Interior-wide information collection once approved. The Regional Database makes this information available to staff at WID stations, allowing them to assess risk associated with quagga/zebra mussels and other AIS on trailered boats. States are asking federal partner agencies to begin using the Regional Database at their sites with WID programs.

Using the Regional Database requires that WID personnel ask boaters four questions and enter the responses via an app on a smartphone or tablet. Two of the four questions vary depending on whether a boater is entering or exiting the waterbody; the other two questions are the same for entering or exiting boaters:

Upon Entering:

1. Has the boat been out of the state in the last 30 days?
2. Has the boat been in any other waters in the last 30 days?

Upon Exiting:

1. What is the destination for the boat?
2. Where and when will the boat be launched next?

Upon Entering or Exiting:

1. What compartments or containers on the boat, including ballast tanks, hold water?
2. Does the boater have any live aquatic bait?

Title of Collection: Watercraft Inspection and Decontamination Regional Data-Sharing for Trailered Boats.

OMB Control Number: 1090–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/household; private sector; and State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 335,602.

Estimated Completion Time per Response: 4 minutes.

Total Estimated Number of Annual Burden Hours: 22,372 hours.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion (upon entry, exit, or both).

Total Estimated Annual Nonhour Burden Cost: None.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021-11095 Filed 5-25-21; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0031999;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: San Juan County Museum Association DBA Salmon Ruins Museum, Bloomfield, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Juan County Museum Association (hereafter referred to as Salmon Ruins Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Salmon Ruins Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Salmon Ruins Museum at the address in this notice by June 25, 2021. **ADDRESSES:** Larry L. Baker, Executive Director, Salmon Ruins Museum, 6131 US Highway 64, P.O. Box 125, Bloomfield, NM 87413, telephone (505) 632-2013, email sreduction@sisna.com.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Salmon Ruins Museum, Bloomfield, NM. The human remains and associated funerary objects were removed from an unknown location most likely in San Juan County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Salmon Ruins Museum professional staff in consultation with the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Jicarilla Apache Nation, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe [previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah]; and the Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas] were invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

Sometime prior to 1996, human remains representing, at minimum, one individual were removed from an unknown location most likely in San Juan County, NM. In 1996, the human remains were donated anonymously to Salmon Ruins Museum. The human remains belong to an adult female. No known individual was identified. The 62 associated funerary objects are pieces

of pottery from a single Navajo Dineth Gray ceramic vessel.

Determinations Made by the Salmon Ruins Museum

Officials of the Salmon Ruins Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 62 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human and associated funerary objects and the Navajo Nation, Arizona, New Mexico, & Utah.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Larry L. Baker, Executive Director, Salmon Ruins Museum, 6131 US Highway 64, P.O. Box 125, Bloomfield, NM 87413, telephone (505) 632-2013, email sreduction@sisna.com, by June 25, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Navajo Nation, Arizona, New Mexico, & Utah may proceed.

The Salmon Ruins Museum is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: May 17, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021-11122 Filed 5-25-21; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0031998;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: San Juan County Museum Association DBA Salmon Ruins Museum, Bloomfield, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Juan County Museum Association (hereafter referred to as the Salmon Ruins Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Salmon Ruins Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Salmon Ruins Museum at the address in this notice by June 25, 2021.

ADDRESSES: Larry L. Baker, Executive Director, Salmon Ruins Museum, 6131 US Highway 64, P.O. Box 125, Bloomfield, NM 87413, telephone (505) 632-2013, email sreducation@sisna.com.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Salmon Ruins Museum, Bloomfield, NM. The human remains and associated funerary objects were removed from San Juan County, New Mexico.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Salmon Ruins Museum professional staff in

consultation with the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico; & Utah; Pueblo of Acoma, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Jicarilla Apache Nation, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe [previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah]; and the Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas] were invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as "The Tribes."

History and Description of the Remains

Between 1970 and 1978, human remains representing, at minimum, 155 individuals were removed from Salmon Ruins (aka Salmon Pueblo) in San Juan County, NM, by Eastern New Mexico University as part of the San Juan Valley Archaeological Program (SJVAP), directed by Dr. Cynthia Irwin-Williams. The SJVAP began in 1970. In 1973, the Salmon Ruins Museum was built to house the collections from the excavations at Salmon Pueblo, and since that date, these human remains and associated funerary objects have been held at the Museum. The human remains belong to 27 infants, 59 juveniles of undetermined sex, one probable female juvenile, 16 adult males, one probable adult male, 15 adult females, 33 adults of undetermined sex, and three individuals of undetermined age and sex. No known individuals were identified. The 8,442 associated funerary items include 2,845 non-human animal bone artifacts, 2,577 ceramic vessels or pieces, 1,187 ethnobotanical plant items, 39 pieces of turkey eggshell, 538 stone artifacts, 21 ornaments, 324 perishable items (including matting, cotton cloth, basketry, cordage, sandal fragments, yucca items, etc.), 463 wood artifacts, and 448 soil samples (removed during excavation from burial areas).

Around 1938, human remains representing, at minimum, two individuals were removed from a site on

the Ben Crane Ranch, in the La Plata Valley, San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains belong to a juvenile of undetermined sex and an adult female. No known individuals were identified. The seven associated funerary objects include one cloudblower pipe, three bone awls, and three pieces of animal bone.

Around 1959, human remains representing, at minimum, two individuals were removed from an unknown site most likely located in San Juan County, NM. Sometime prior to 1996, these human remains were donated to the Salmon Ruins Museum. The human remains—two skulls—belong to a female of undetermined age and a male of undetermined age. No known individuals were identified. No associated funerary objects are present.

At some point in the 1960s, human remains representing, at minimum, one individual were removed from an unknown site in Largo Canyon, San Juan County, NM. In 2008, these human remains were donated to the Salmon Ruins Museum. The human remains—a skull with partial mandible—belong to an adult male. No known individual was identified. No associated funerary objects are present.

At some point in the 1960s, human remains representing, at minimum, one individual were removed from an unknown site in Largo Canyon, San Juan County, NM. In 2007, these human remains were donated to the Salmon Ruins Museum. The human remains—a skull—belong to an adult male. No known individual was identified. No associated funerary objects are present.

Around 1968, human remains representing, at minimum, two individuals were removed from an unknown site most likely located in San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains—two skulls—belong to an adult male and an adult female. No known individuals were identified. The two associated funerary objects are rim sherds from a ceramic bowl.

In 1972, human remains representing, at minimum, one individual were removed from a site on private land in San Juan County, NM. The site is designated SJ 146. In 1981, these human remains were donated to the Salmon Ruins Museum. The human remains belong to a juvenile. No known individual was identified. The 10 associated funerary objects are nine pieces of animal bone and one soil sample taken from the burial area.

In 1972, human remains representing, at minimum, one individual were removed from a site on private land located west of Salmon Ruins (Pueblo) in San Juan County, NM. In 1973, these human remains were donated to the Salmon Ruins Museum. The human remains belong to a juvenile. No known individual was identified. The nine associated funerary objects are one metate stone used as a grave cover and eight animal bones.

In 1973, human remains representing, at minimum, one individual were removed from a site on private land in San Juan County, NM. The site is designated ENM 5109. In 1975, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult male. No known individual was identified. The two associated funerary objects include one ceramic vessel and one soil sample taken from the burial area.

Sometime prior to 1975, human remains representing, at minimum, two individuals were removed from an unknown site most likely located in San Juan County, NM. In 1975, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult male and an adult of unknown sex. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1975, human remains representing, at minimum, two individuals were removed from an unknown site most likely located in San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains—two skulls with mandibles—belong to an adult male and an adult female. No known individuals were identified. No associated funerary objects are present.

In 1975, human remains representing, at minimum, one individual were removed from the Morris 41 site (ENM 5098) in the La Plata Valley, San Juan County, NM. In 1975, these human remains were donated to the Salmon Ruins Museum. The human remains belong to a juvenile. No known individual was identified. The four associated funerary objects are soil samples from the burial area.

In 1976, human remains representing, at minimum, three individuals were removed from an unknown site most likely located in San Juan County, NM. Sometime prior to 1996, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult of unknown sex and two juveniles. No known individuals were identified. The seven associated funerary objects are ceramic sherds.

In 1977, human remains representing, at minimum, two individuals were removed from an unknown site in the vicinity of Gobernador, San Juan County, NM. Sometime prior to 1996, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult male and an adult female. No known individuals were identified. The 11 associated funerary objects are ceramic sherds.

Sometime prior to 1981, human remains representing, at minimum, one individual were removed from an unknown site most likely located in San Juan County, NM. In 1981, these human remains were donated to the Salmon Ruins Museum. The human remains—a skull and mandible—belong to an adult male. No known individual was identified. The 31 associated funerary objects are ceramic vessel sherds.

Sometime prior to 1990, human remains representing, at minimum, one individual were removed from the Roberts site in the La Plata Valley, San Juan County, NM. In 1980, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult male. No known individual was identified. The 525 associated funerary objects include 225 ceramic sherds, four pieces of burned adobe, 295 stone tools and artifacts, and one corn cob.

In 1990, human remains representing, at minimum, one individual were removed from site LA 10274, located just west of the Salmon Ruins Museum in San Juan County, NM. In 1990, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an individual of unknown age and sex. No known individual was identified. No associated funerary objects are present.

In 1994, human remains representing, at minimum, two individuals were removed from site LA 104984 in San Juan County, NM. In 1995, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult female and a juvenile. No known individuals were identified. The 146 associated funerary objects include 66 ceramic sherds, 60 animal bones, 12 stone artifacts, two pieces of wood charcoal, and six pollen samples.

Sometime prior to 1996, human remains representing, at minimum, three individuals were removed from an unknown site most likely located in San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains—two skulls—belong to two adult males. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1996, human remains representing, at minimum, four individuals were removed from an unknown site most likely located in San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains belong to three juveniles and one adult female. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1996, human remains representing, at minimum, two individuals were removed from an unknown site most likely located in San Juan County, NM, and were donated to the Salmon Ruins Museum. The human remains belong to two juveniles. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1996, human remains representing, at minimum, one individual were removed from an unknown site most likely located in San Juan County, NM. In 1996, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult of undetermined sex. No known individual was identified. The 24 associated funerary objects are three partial ceramic vessels, two ceramic handles, one ceramic human leg effigy, one stone artifact, 12 bone artifacts, and five minerals.

In 2008, human remains representing, at minimum, two individuals were removed from site LA 159001, near Farmington, San Juan County, NM. In 2008, these human remains were donated to the Salmon Ruins Museum. The human remains belong to an adult female and a juvenile. No known individuals were identified. The 415 associated funerary objects include 367 ceramic sherds, one piece of burned adobe, 39 stone tools and artifacts, one bone awl, three pieces of yellow ochre, three pieces of wood-charcoal, and one soil sample from the burial area.

Sometime prior to 2011, human remains representing, at a minimum, one individual were removed from an unknown site most likely located in San Juan County, NM. In 2011, these human remains were donated to the Salmon Ruins Museum. The human remains—a mandible—belong to an adult male. No known individual was identified. No associated funerary objects are present.

Determinations Made by Salmon Ruin Museum

Officials of the Salmon Ruins Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their discovery in Native American sites and locations.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 194 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the 9,635 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Larry L. Baker, Executive Director, Salmon Ruins Museum, 6131 US Highway 64, P.O. Box 125, Bloomfield, NM 87413, telephone (505) 632-2013, email sreducation@sisna.com, by June 25, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Salmon Ruins Museum is responsible for notifying The Tribes that this notice has been published.

Dated: May 17, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021-11121 Filed 5-25-21; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0032000;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Princeton University, Princeton, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Princeton University has completed an inventory of an associated funerary object, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the associated funerary object and present-day Indian Tribes or Native Hawaiian organizations and a lineal descendant. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the associated funerary object should submit a written request to Princeton University. If no additional requestors come forward, transfer of control of the associated funerary object to the lineal descendant, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the associated funerary object should submit a written request with information in support of the request to Princeton University at the address in this notice by June 25, 2021.

ADDRESSES: Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258-8805, email bjust@princeton.edu.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of an associated funerary object under the control of Princeton University, Princeton, NJ. The associated funerary object was removed from Old Stickeen, Wrangell, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the associated funerary object was made by Princeton University professional staff in consultation with representatives of the Central Council of the Tlingit & Haida Indian Tribes. Although an invitation to consult was extended to a lineal descendant, Luella Knapp, the coronavirus pandemic impeded this effort to consult.

History and Description of the Associated Funerary Object

In 1879, Sheldon Jackson removed a carved wooden mortuary pole from Old Stickeen, Wrangell, AK. The mortuary pole is known by the Tlingit as the Kadashan mortuary pole (PU 5210). John Muir witnessed the removal of the pole and reported on it in his book *Travels in Alaska*. Sheldon Jackson was a member of the Presbyterian Missions in Alaska and an alumnus of the Princeton Theological Seminary. Between 1879 and 1882, Jackson made donations to the Princeton Theological Seminary that included the Kadashan mortuary pole. In 1882, the pole was transferred to Princeton University's E.M. Museum of Natural History. The backside of the pole contains a niche that would have contained human remains. According to the Central Council of the Tlingit & Haida Indian Tribes, Luella Knapp is the great granddaughter of Chief Kadashan and the caretaker of this mortuary pole. Her mother, Carol Feller Brady, was the daughter of Elizabeth Kadashan James, who in turn was the daughter of Chief John Kadashan.

Determinations Made by Princeton University

Officials of Princeton University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been made exclusively to contain human remains.

- Pursuant to 25 U.S.C. 3001(1), Luella Knapp is the lineal descendant of the individual whose remains were interred in the mortuary pole.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary object and the Central Council of the Tlingit & Haida Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the associated funerary object should submit a written request with information in support of the request to Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258-5013, email bjust@princeton.edu, by June 25, 2021. After that date, if no additional requestors have come forward, transfer of control of the associated funerary object to Luella Knapp and the Central Council of the Tlingit & Haida Indian Tribes may

proceed (with priority given in the order listed).

Princeton University is responsible for notifying Luella Knapp and the Central Council of the Tlingit and Haida Indian Tribes of Alaska that this notice has been published.

Dated: May 17, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021-11117 Filed 5-25-21; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1266]

Certain Wearable Electronic Devices With ECG Functionality and Components Thereof; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 20, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of AliveCor, Inc. of Mountain View, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wearable electronic devices with ECG functionality and components thereof by reason of infringement of one or more claims of U.S. Patent No. 10,595,731 (“the ‘731 patent”); U.S. Patent No. 10,638,941 (“the ‘941 patent”); and U.S. Patent No. 9,572,499 (“the ‘499 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access

to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 20, 2021, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-30 of the ‘731 patent; claims 1-23 of the ‘941 patent; claims 1-4, 6-14, 16-20 of the ‘499 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “Apple Watches with ECG functionality, and hardware and software components thereof”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: AliveCor, Inc., 444 Castro St., Suite 600, Mountain View, CA 94041.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Apple, Inc., One Apple Park Way, Cupertino, CA 95014.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 20, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11094 Filed 5-25-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1199]

Certain Tobacco Heating Articles and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 14, 2021, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation

be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

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, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically, a limited exclusion order directed to certain tobacco heating articles and components thereof imported, sold for importation, and/or sold after importation by respondents Altria Client Services LLC and Philip Morris USA, Inc., both of Richmond, Virginia; and Philip Morris Products S.A. of Neuchatel, Switzerland. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on May 14, 2021. Comments should address whether

issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 14, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1199") in a prominent place on the cover page and/or the first page. (See *Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly

sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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).

Issued: May 20, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11093 Filed 5-25-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-841]

Importer of Controlled Substances Application: Purisys, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Purisys, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 25, 2021. Such persons may also file a written request for a hearing on the application on or before June 25, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 6, 2021, Purisys, LLC, 1550 Olympic Drive, Atlanta, Georgia 30601–1602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Noroxymorphone	9668	II

The company plans to use as reference standards for analytical and research purposes for their customers. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2021–11070 Filed 5–25–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–840]

Importer of Controlled Substances Application: Almac Clinical Services Incorp. (ACSI)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Almac Clinical Services Incorp. (ACSI) has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the

issuance of the proposed registration on or before June 25, 2021. Such persons may also file a written request for a hearing on the application on or before June 25, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 30, 2021, Almac Clinical Services Incorp, (ACSI) 25 Fretz Road, Souderton, Pennsylvania 18964, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Oxycodone	9143	II
Hydromorphone	9150	II
Morphine	9330	II
Noroxymorphone	9668	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to import the listed finished dosage unit products controlled substances in dosage form to conduct clinical trials. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to import of the Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2021–11069 Filed 5–25–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), and the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 12:00 p.m., (Eastern Daylight Time) on Tuesday, June 15, 2021, and continue until 4:30 p.m. The meeting will reconvene at 12:00 p.m., on Wednesday, June 16, 2021 and adjourn at 4:30 p.m. The period from 3:00 p.m., to 4:00 p.m., on June 16, 2021 is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held virtually on the Zoom.gov platform. To join the meeting use the following:

<https://www.zoomgov.com/j/1613101548?pwd=dDBXQk1Uc2htNGZYR08rQ0s4VXB5QT09>

Meeting ID: 161 310 1548.

Passcode: 513970.

Dial in number: +1 (551) 285–1373.

SUPPLEMENTARY INFORMATION: Council members and members of the public are encouraged to logon to *Zoom.gov* early to allow for connection issues and troubleshooting.

Security Instructions: Meeting participants should use the link and dial in instructions provided in **ADDRESSES**.

The meeting will be open to the public.

Members of the public not present may submit a written statement by Thursday, June 11, 2021, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), U.S. Department of Labor at *brown.athena@dol.gov*. Persons who need special accommodations should contact Suzie Casal at (703) 967–1829 or *casal.suzie@dol.gov*, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) Update of National Congress of American Indians policy recommendations, (2) PY 2021/2022 training and technical assistance priorities, (3) update on Indian and

Native American Employment Rights Office; (4) status of American Indian Labor Force Report; (5) employment and training conference plans; (6) Registered Apprenticeship; and (7) public comment.

FOR FURTHER INFORMATION CONTACT:

Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room C-4311, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number (202) 693-3737 (VOICE) (this is not a toll-free number).

Suzan G. LeVine,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-11144 Filed 5-25-21; 8:45 am]

BILLING CODE 4510-FR-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summaries of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 25, 2021.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery

service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Jessica D. Senk, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Senk.Jessica@dol.gov, (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2021-010-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Bailey Mine, MSHA ID No. 36-07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507-1(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Bailey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX in return air outby the last open crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners

against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020, and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of "ia." (ATEX refers to European directives for

controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20\text{ °C} \leq T_a \leq +55\text{ °C}$, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPER must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPER user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the "high filter load

alarm" on the 3M™ Versaflo™ TR-800 and the "blocked filter" alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800 shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX in the return air outby the last open

crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air outby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133 in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be "changed out" in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™

4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of

the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-011-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Bailey Mine, MSHA ID No. 36-07230, located in Greene County, Pennsylvania *Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection for miners at the Bailey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR), and the CleanSpace EX in or inby the last crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 unit which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product

line that created issues with providing acceptable supply service levels.

Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of "ia." (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, -20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative

to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPER must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPER user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the "high filter load alarm" on the 3M™ Versaflo™ TR-800 and the "blocked filter" alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800 shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used inby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air inby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent.

When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be "changed out" in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of

the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(g) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used in the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-012-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Bailey Mine, MSHA ID No. 36-07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors: Permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Bailey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream product line that have created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products

for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). ATEX-certified with an IS rating of “ia.” (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, -20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner

will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPER must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPER user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR-800 and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used on the longwall face or within 150 feet of pillar workings shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer’s recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800 shall include:

- i. Check the equipment for any physical damage and the integrity of the case;
- ii. Remove the battery and inspect for corrosion;
- iii. Inspect the contact points to ensure a secure connection to the battery;
- iv. Reinsert the battery and power up and shut down to ensure proper connections;
- v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.
- vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer’s recommendations. Dates of service will be recorded in the equipment’s log book and shall include a description of the work performed.

(h) The 3M Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used on the longwall face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX in by the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX on the longwall face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn out by the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be “changed out” in intake air out by the

last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

- i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.
- ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:
 - a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or,
 - b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.
- iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.
- iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.
- v. The batteries shall not be used, charged or stored in locations where the manufacturer’s recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.
- (p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.
- (q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health

Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR–800 or CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR–800 or CleanSpace EX can be used on the longwall face or within 150 feet of pillar workings. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2021–11073 Filed 5–25–21; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summaries of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 25, 2021.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Jessica D. Senk, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), Senk.Jessica@dol.gov (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or

other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2021–013–C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Harvey Mine, MSHA ID No. 36–10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Harvey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX in return air outby the last open crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR–800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels. Because of those issues, 3M

discontinued the Airstream™ in June 2020, and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEX (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of “ia.” (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20\text{ °C} \leq T_a \leq +55\text{ °C}$, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR-800 and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800 shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX in the return air outby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air outby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in

concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133 in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be “changed out” in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer’s recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and

limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-014-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Harvey Mine, MSHA ID No. 36-10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection for miners at the Harvey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsic Safe Powered Air Purifying Respirator (PAPR), and the CleanSpace EX in or inby the last crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 unit which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications.

3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels.

Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the

Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. It has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of “ia.” It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20\text{ °C} \leq T_a \leq +55\text{ °C}$, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR-800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA’s standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR-800 and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer’s recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR-800I shall include:

- i. Check the equipment for any physical damage and the integrity of the case;
- ii. Remove the battery and inspect for corrosion;
- iii. Inspect the contact points to ensure a secure connection to the battery;
- iv. Reinsert the battery and power up and shut down to ensure proper connections;
- v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.
- vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the

equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer’s recommendations. Dates of service will be recorded in the equipment’s log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs that will be used inby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR-800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in the return air inby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR-800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR-800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be “changed out” in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR-830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR-830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR-641N, which includes one 3M™ Charger Cradle TR-640 and one 3M™ Power Supply TR-941N, or

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA

Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used in by the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-015-C.

Petitioner: Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

Mine: Harvey Mine, MSHA ID No. 36-10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors: Permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Harvey Mine in Pennsylvania. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace

EX within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR-800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream product line that have created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR-800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). It has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes

Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). ATEX-certified with an IS rating of “ia.” It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20\text{ °C} \leq T_a \leq +55\text{ °C}$, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR–800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR–800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA’s standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR–800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall

conduct regular examinations of the filter and perform periodic testing for proper operation of the “high filter load alarm” on the 3M™ Versaflo™ TR–800 F and the “blocked filter” alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs to be used on the longwall face or within 150 feet of pillar workings shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer’s recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR–800I shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs are serviced according to the manufacturer’s recommendations. Dates of service will be recorded in the equipment’s log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that will be used on the longwall face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR–800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX on the longwall face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR–800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be “changed out” in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR–830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR–641N, which includes one 3M™ Charger Cradle TR–640 and one 3M™ Power Supply TR–941N, or,

b. 3M™ 4-Station Battery Charger Kit TR-644N, which includes four 3M™ Charger Cradles TR-640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR-944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR-800 or CleanSpace EX PAPER.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR-800 or CleanSpace EX can be used on the longwall face or within 150 feet of pillar workings. The operator shall keep a record of such training and

provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2021-11074 Filed 5-25-21; 8:45 am]

BILLING CODE 4520-43-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206-0121, Application for Deferred Retirement (for Persons Separated On or After October 1, 1956), OPM 1496A

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Application for Deferred Retirement (for persons separated on or after October 1, 1956), OPM 1496A.

DATES: Comments are encouraged and will be accepted until June 25, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail

to: oira_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to Cyrus.Benson@opm.gov or faxed to (202) 606-0910 or via telephone at (202) 606-4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206-0121) was previously published in the **Federal Register** on December 30, 2020 at 85 FR 86583, allowing for a 60-day public comment period. No comments were received.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

OPM Form 1496A is used by eligible former Federal employees to apply for a deferred Civil Service annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Deferred Retirement (for Persons Separated on or After October 1, 1956).

OMB Number: 3206-0121.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,800.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 2,800 hours.

Office of Personnel Management.
Alexys Stanley,
Regulatory Affairs Analyst.
[FR Doc. 2021-11154 Filed 5-25-21; 8:45 am]
BILLING CODE 6325-38-P

reprinted below in accordance with 39 U.S.C. 3632(b)(2).

Joshua J. Hofer,
Attorney, Ethics & Legal Compliance.

Decision of the Governors of the United States Postal Service on Mail Classification Schedule Changes Related to the Outbound Commercial Provider Initiative (OCPI) (Governors' Decision No. 21-4)

May 6, 2021

Statement of Explanation and Justification

Pursuant to our authority under section 404(b) and Chapter 36 of title 39, United States Code, the Governors establish classification changes related to the Outbound Commercial Provider Initiative (OCPI).

The OCPI would allow the Postal Service to offer outbound international service for package shipments through the use of a supplier in lieu of the destination country postal operator. OCPI is designed to help the Postal Service remain competitive in the cross-border shipping market, by providing the ability for delivery in the destination country of certain outbound international products by a third-party supplier, instead of the designated foreign postal operator of the destination country. This provides the Postal Service the option of selecting providers that may be able to offer either

superior service or better destination delivery prices, or both.

In order to implement the OCPI, revisions to the Mail Classification Schedule (MCS) should be made. These changes to the MCS would not mandate the use of the OCPI, but rather maintain flexibility to allow its use in particular outbound international traffic lanes.

We have evaluated the classification changes related to the OCPI for the Outbound Single-Piece First-Class Package International Service product in this context in accordance with Title 39 of the United States Code. We approve the changes, finding that they are appropriate, and are consistent with the applicable criteria.

Order

We direct management to provide the required public notice, and to file with the Postal Regulatory Commission the required documents and supporting documents consistent with this Decision. The changes in classification to the Mail Classification Schedule set forth herein are intended to be effective thirty days after the material MCS changes are filed with the Postal Regulatory Commission, or as soon as practicable thereafter.

By The Governors:

/s/

Ron A. Bloom,
Chairman, Board of Governors.

POSTAL SERVICE

Classification Changes—First-Class Package International Service: Postal Service™

ACTION: Notice of classification changes to First-Class Package International Service.

SUMMARY: This notice set forth changes for the classification description of Outbound Single-Piece First-Class Package International Service.

DATES: *Date of notice:* May 26, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268-7820.

SUPPLEMENTARY INFORMATION: On May 6, 2021, pursuant to their authority under 39 U.S.C. 3632, the Governors of the United States Postal Service® established classification changes for a competitive product, namely, Outbound Single-Piece First-Class Package International Service. The Governors' Decision and the record of proceedings in connection with such decision are

2335 Outbound Single-Piece First-Class Package International Service

2335.1 Description

- a. Outbound Single-Piece First-Class Package International Service consists of outbound international ~~letter post~~ packages and rolls (destined for delivery outside of the United States) ~~that are subject to the provisions of the Universal Postal Convention of the Universal Postal Union and that are not entered as Priority Mail International.~~

- c. Outbound Single-Piece First-Class Package International Service pieces that are undeliverable-as-addressed ~~are entitled to~~ may be forwarded if applicable or returned to the sender.

United States Postal Service
Office of the Board of Governors
Certification of Governors' Vote on
Governors' Decision No. 21-4

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on May 6, 2021, the Governors voted on adopting Governors' Decision No. 21-4, and that a majority of the Governors then holding office voted in favor of that Decision.

Date: May 6, 2021

/s/

Michael J. Elston,
Secretary of the Board of Governors.

[FR Doc. 2021-11104 Filed 5-25-21; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE
COMMISSION

[Release No. 34-91948; File No. SR-NYSE-2021-33]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

May 20, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 17, 2021, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) introduce a new fee for orders designated with a Retail Modifier at the open and the close; (2) revise certain requirements for executions at the open and the close; (3) introduce an additional credit under the Step Up Tier 2 Adding Credit; and (4) revise certain requirements for Retail Price Improvement ("RPI") orders in the Retail Liquidity Program. The Exchange proposes to implement the fee changes

effective May 17, 2021.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) introduce a new fee for orders designated with a Retail Modifier at the open and the close; (2) revise certain requirements for executions at the open and the close; (3) introduce an additional credit under the Step Up Tier 2 Adding Credit; and (4) revise certain requirements for RPI orders in the Retail Liquidity Program.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional liquidity to the Exchange, including retail order flow.

The Exchange proposes to implement the fee changes effective May 17, 2021.

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market

system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁵

While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."⁶ Indeed, equity trading is currently dispersed across 16 exchanges,⁷ 31 alternative trading systems,⁸ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 12%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the numerous currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Price List on May 3, 2021 (SR-NYSE-2021-30). SR-NYSE-2021-30 was subsequently withdrawn and replaced by this filing.

attract additional order flow to the Exchange by incentivizing member organizations to submit additional displayed liquidity to the Exchange, including retail order flow.

Proposed Rule Change

Executions at the Open

For securities priced \$1.00 or more, the Exchange currently charges a fee of \$0.0010 per share for executions at the open and a fee of \$0.0003 per share for executions at the open by Floor brokers, subject to a monthly fee cap of \$30,000 per member organization provided the member organization executes an average daily volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”),¹⁰ excluding liquidity added by a Designated Market Maker (“DMM”), of at least five million shares.

The Exchange proposes to introduce a fee of \$0.0005 for executions at the open designated with a Retail Modifier as defined in Rule 13.¹¹ In addition, the Exchange proposes to increase the per member organization monthly fee cap for all member organization executions at the open to \$35,000. As proposed, the fee for executions at the open with a Retail Modifier as well as the current fees for executions at the open would be subject to a \$35,000 per member organization monthly fee cap.¹² DMMs currently are not charged for executions at the opening and would continue to not be charged.

The Exchange believes that the proposed fee for executions at the open designated with a Retail Modifier would encourage additional retail liquidity on the Exchange’s opening auction by reducing the fee to execute at the open for those orders. The Exchange also believes a higher cap will encourage member organizations to increase their activity in order to qualify for the existing fees and the proposed fee for executions at the open.

¹⁰ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

¹¹ The Exchange proposes the non-substantive, conforming change of replacing “designated with a Retail Modifier as defined in Rule 13” and “designated as ‘retail’ (*i.e.*, orders that satisfy the Retail Modifier requirements of Rule 13” with the defined term “Retail Modifier” where the phrases appear in the Price List. In one place, “are not designated with a Retail Modifier as defined in Rule 13” would be replaced with “no Retail Modifier.” As Rule 13 makes clear, orders with a “retail” modifier are separate and distinct from a “Retail Order” under Rule 107C (now Rule 7.44, see note 17, *infra*).

¹² The Exchange has not previously amended the \$30,000 cap. In 2020, the Exchange eliminated an alternative cap and corresponding requirements. See Securities Exchange Act Release Nos. 87957 (January 14, 2020), 85 FR 3440 (January 21, 2020) (SR-NYSE-2020-02).

Executions at the Close

Currently, for all market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders from any member organization in the prior three billing months that do not meet the MOC/LOC Tier 1, Tier 2, or Tier 3 requirements, the Exchange currently charges member organizations \$0.0010 per share for MOC orders, \$0.0005 for MOC orders executed by a Floor broker unless a lower tiered fee applies, and \$0.0011 for LOC Orders. The Exchange proposes to charge \$0.0008 per share for MOC and LOC Orders with a Retail Modifier, unless a lower tiered fee applies.

Similarly, the Exchange does not currently charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for D Orders,¹³ Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding market at-the-close (“MOC”) Orders, limit at-the-close (“LOC”) Orders and Closing Offset (“CO”) Orders. After the first 750,000 ADV of the aggregate of executions at the close by a member organization, D Orders are charged fees differentiated by time of entry (or last modification). With respect to D Orders last modified in the last 3 minutes before the scheduled close of trading, the Exchange charges member organizations in MOC/LOC Tiers 1 and 2 a fee of \$0.0008 per share. The Exchange proposes to charge this fee to member organizations in MOC/LOC Tiers 1 and 2, both with an Adding ADV of at least 0.50% of Tape A CADV. The purpose of this change is to encourage additional adding liquidity on the Exchange by providing an incentive for member organizations to submit greater adding liquidity to achieve a lower fee for D Orders at the close.

Step Up Tier 2 Adding Credit

Under the current Step Up Tier 2 Adding Credit, a member organization that sends orders, except Mid-Point Liquidity Orders (“MPL”) and Non-Displayed Limit Orders, that add liquidity in Tape A securities receives the credit specified below if:

- The member organization quotes at least 15% of the National Best Bid or Offer (“NBBO”) ¹⁴ in 300 or more Tape A securities on a monthly basis, and

¹³ “d-Quotes” are now called “D Orders.” See Rule 7.31(Orders and Modifiers). The Exchange proposes the non-substantive change of replacing references to “d-Quote” and “d-Quotes” with “D Order” and “D Orders,” respectively, in the Price List.

¹⁴ See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

- The member organization’s Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any orders by a DMM, that
 - is at least two times more than the Member Organization’s Adding ADV in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV, and

- adds liquidity as an Supplemental Liquidity Provider (“SLP”) in Tape A securities of at least 0.10% of NYSE CADV, and

- exceeds the Member Organization’s Adding ADV, excluding any liquidity added by a DMM, in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV by at least 0.20% of Tapes A, B and C CADV.

Currently, member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.20% and less than 0.35% over their July 2019 Adding ADV as a percentage of US CADV receive a \$0.0029 credit. Member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.35% and less than 0.45% over their July 2019 Adding ADV as a percentage of US CADV receive a \$0.0030 credit. Finally, member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.45% or more over their July 2019 Adding ADV as a percentage of US CADV receive a \$0.0031 credit.

In addition, a member organization that meets these requirements and adds liquidity, excluding liquidity added as a SLP, in Tapes B and C Securities of at least 0.20% of Tape B and Tape C CADV combined receives an additional \$0.00005 per share for adding liquidity in Tape A securities.

The Exchange proposes to modify the current requirements to qualify for the Step Up Tier 2 Adding Credit, as follows.

First, a member organization’s Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any orders by a DMM, would need to be at least 1.75 times more than the Member Organization’s Adding ADV in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV.

Second, a member organization would need to add liquidity as an SLP in Tape A securities of at least 0.05% of NYSE CADV.

Third, a member organization’s Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any orders by a DMM, would need to exceed the member organization’s Adding ADV,

excluding any liquidity added by a DMM, in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV by at least 0.10% of Tapes A, B and C CADV.

In addition, the Exchange proposes a \$0.0025 credit for member organizations that meet the requirements for the Step Up Tier 2 Adding Credit as modified whose Adding ADV as a percentage of US CADV represents an increase of at least 0.10% and less than 0.20% over their July 2019 Adding ADV as a percentage of US CADV.

The requirements for the current increase in Adding ADV as a percentage of US CADV over the member organization's July 2019 Adding ADV as a percentage of US CADV, of at least 0.20% and less than 0.35% for the \$0.0029 credit, of at least 0.35% and less than 0.45% for the \$0.0030 credit, and of at least 0.45% for the \$0.0031 credit, would all remain unchanged.

The purpose of the proposed change is to incentivize member organizations to increase the liquidity-providing orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. By offering a lower credit with a lower increase in Adding ADV requirement, the Exchange believes the proposed change would encourage more member organizations to try to achieve the offered step up credits by directing more order flow that adds liquidity to the Exchange. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades against orders that add liquidity, the Exchange believes that the proposed higher credits based on a commensurate increase in Adding ADV would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for the higher credits.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. As described above, member organizations with

liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate credit and modifying the requirements for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credit.

RPI Orders

The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.¹⁵ Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a "Retail Order," which is an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.¹⁶ In addition to RMOs, an additional class of market participants known as Retail Liquidity Providers ("RLPs") are required to provide potential price improvement for Retail Orders in the form of "RPIs," which are non-displayed interest that is better than the best protected bid ("PBB") or best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO").¹⁷

A fee of \$0.0003 per share currently applies to non-RLP member organization executions of RPIs against

Retail Orders, unless the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs, in which case a credit of \$0.0003 per share applies. The Exchange proposes to eliminate the exception for non-RLP member organizations that executes an ADV during the month of at least 500,000 shares of RPIs. As proposed, non-RLP member organizations will receive a credit of \$0.0003 per share for all RPI orders.¹⁸

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²¹ While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where

¹⁸ The Exchange also proposes two non-substantive changes in this section of the Price List. First, the Exchange proposes the conforming change of deleting "a non-RLP member organization (except DMMs), unless the rate immediately below applies; and" which would be obsolete once the exception is deleted. Second, the Exchange would update the relevant rule reference from Rule 107C to Rule 7.44. The Exchange relocated the substance of Rule 107C to Rule 7.44 as part of the transition of NYSE-listed securities to the Exchange's Pillar trading platform. See Securities Exchange Act Release No. 85930 (May 23, 2019), 84 FR 25100 (May 30, 2010) (SR-NYSE-2020-26).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) & (5).

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

¹⁵ See Rule 7.44.

¹⁶ See *id.* at (a)(3). An RMO is as a member organization (or a division thereof) that has been approved by the Exchange under Rule 7.44 to submit Retail Orders. As noted above, under the Exchange's rules, a "Retail Order" is separate and distinct from an order with Retail Modifier.

¹⁷ See 17 CFR 242.600(b)(57). RLP is defined in Rule 7.44(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 7.44. RPI is defined in Rule 7.44(a)(4) and consists of non-displayed interest in NYSE-listed securities that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such. Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²²

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

The Proposed Change Is Reasonable Executions at the Open

The Exchange believes that the proposed fee for executions at the open designated with a Retail Modifier as defined in Rule 13 and the higher per member organization monthly fee cap for all member organization executions at the open are reasonable. The Exchange believes that the proposed fee for executions at the open with a Retail Modifier will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the opening. The Exchange also believes a higher cap will encourage member organizations to increase their activity in order to qualify for the higher cap, which will result in no fees for executions above the new cap for those member organizations, which will benefit all participants through greater liquidity at the open.

Executions at the Close

The Exchange believes that the proposed fee for MOC and LOC Orders with a Retail Modifier, unless a lower tiered fee applies, and the revised requirements for the fee for D Orders last modified in the last 3 minutes before the scheduled close of trading, are reasonable. The purpose of these changes is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity present on a public exchange. The Exchange’s Closing Auction is a recognized industry reference point,²³ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange’s closing price on a daily

basis. Finally, the Exchange believes it’s reasonable to require an Adding ADV of 0.50% for the \$0.0008 per share fee for D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1 and 2 as it would encourage greater adding liquidity on the Exchange, which benefits all market participants.

Step Up Tier 2 Adding Credit

The Exchange believes that revising the current requirements to qualify for the Step Up Tier 2 Adding Credit and introducing a \$0.0025 credit for member organizations that meet the requirements for the Step Up Tier 2 Adding Credit as modified whose Adding ADV as a percentage of US CADV represents an increase of at least 0.10% and less than 0.20% over their July 2019 Adding ADV as a percentage of US CADV is reasonable.

Specifically, the Exchange believes that offering credits for increased Adding ADV of a minimum and maximum percentage over a baseline would provide an incentive for member organizations to route additional liquidity providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide incrementally higher credits for orders that provide additional liquidity because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. Because the tier requires a member organization to increase the volume of its trades against orders that add liquidity, the Exchange believes that the proposed lower credit based on a commensurate increase in Adding ADV would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for the higher credits. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate credit and modifying the requirements for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. However, without having a view of

member organization’s activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credit.

RPI Orders

The Exchange believes that eliminating the exception for non-RLP member organizations that execute an ADV during the month of at least 500,000 shares of RPIs so that non-RLP member organizations would receive a credit of \$0.0003 per share for all RPI orders is reasonable because it would further incentivize submission of RPIs for interaction with Retail Orders and therefore could result in greater price improvement for Retail Orders. The proposed change is also reasonable because, with the revision of the requirements, non-RLP member organizations, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs.

Non-Substantive Changes

Finally, the Exchange believes the proposed non-substantive clarifying and conforming changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Proposal Is an Equitable Allocation of Fees

Executions at the Open

The Exchange believes the proposed fee for executions at the open with a Retail Modifier and to increase to the monthly fee cap are equitable because the proposal would contribute to robust levels of liquidity at the open, which benefits all market participants by attracting more liquidity to the Exchange, thereby improving market wide quality and price discovery at the open. The Exchange believes the proposed fee and increase to the monthly fee cap is reasonable as it would encourage the submission of additional retail liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the opening.

The proposal neither targets nor will it have a disparate impact on any

²² See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

²³ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

particular category of market participant. All member organizations that provide retail liquidity at the Exchange open could be eligible to qualify for the proposed fee. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for fee for executions at the open, the proposal will not adversely impact their existing pricing or their ability to qualify for other fees provided by the Exchange. Moreover, the proposed change represents an equitable allocation of the Exchange's fees because it would apply equally to all similarly situated member organizations. Finally, the Exchange notes that other markets have a similar cap for executions at the opening.²⁴

Executions at the Close

The Exchange believes that it is equitable to modify the fees and requirements for executions at the close because the proposed changes would incentivize member organizations to send in more closing auction volume to the primary market, thereby deepening the Exchange's liquidity pool and supporting the quality of price discovery. The Exchange believes that it is equitable to charge fees to encourage member organizations to send orders to the Exchange for the closing auction because member organizations would continue to derive a substantial benefit from the higher volume of closing executions. The Exchange believes that its proposal would equitably balance these interests and continue to encourage order flow from multiple sources, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants.

Step Up Tier 2 Adding Credit

The Exchange believes that the proposal to provide an additional incremental credit and lower the requirement for member organizations to qualify for the Step Up Tier 2 Adding Credit is equitable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the

greater amounts of displayed liquidity present on the Exchange. The Exchange believes that the magnitude of the additional credit is not unreasonably high compared to the current credits for Step Up Tier 2 and also relative to the other adding tier credits, which range from \$0.0015 to \$0.0031, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.²⁵

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. Since the proposed credit would be new, no member organization currently qualifies for it. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate credit and modifying the requirements for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credit.

The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the proposed credit if they increase their Adding ADV over their own baseline of order flow accordingly. The Exchange believes that offering step up credits for providing liquidity if the step up requirements for Tape A securities are met, will continue to attract order flow and liquidity to the

Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal would provide a lower entry point and revised requirements that could allow those member organizations to qualify for a credit. The proposal will also not adversely impact their ability to qualify for other credits provided by the Exchange.

RPI Orders

The proposal to enable non-RLP member organizations to receive a credit of \$0.0003 per share for all RPI orders would contribute to robust amounts of RPI liquidity submitted by non-RLPs being available for interaction with the Retail Orders. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. The Exchange believes that an increase in the amount of RPI liquidity interacting with Retail Orders would contribute to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. Accordingly, the Exchange believes that an increase in the amount of RPI liquidity on the Exchange has the potential to benefit all market participants. For these reasons, the Exchange believes that the proposed pricing is equitable and would continue to encourage greater retail participation on the Exchange.

The Proposal Is Not Unfairly Discriminatory

Executions at the Open

The Exchange believes it is not unfairly discriminatory to introduce a fee for executions at the open designated with a Retail Modifier and to increase the monthly fee cap because the proposed fee would be provided on an equal basis to all member organizations that add additional retail liquidity on the Exchange's opening auction and the monthly cap would apply to all member organizations equally. As noted, the Exchange believes that the proposed fee and higher monthly cap would provide an incentive for member organizations to increase their activity and provide additional liquidity at the open. The proposal will encourage the submission of additional retail liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member

²⁴ For instance, on Nasdaq, each firm's Opening Cross charges for Market-On-Open (MOO) and Limit-On-Open (LOO) orders are capped at \$35,000 per month, provided that the firm adds one million shares of liquidity, on average, during the month. See Nasdaq Price List, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²⁵ See Choe BZX Fee Schedule, which has adding credits ranging from \$0.0025 to \$0.0032, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

organizations from the substantial amounts of liquidity that are present on the Exchange during the opening. Accordingly, the Exchange believes the proposed change is not unfairly discriminatory because it would continue to encourage member organizations to send orders to the Exchange for execution at the open, thereby contributing to robust levels of liquidity on the Exchange, which benefits all market participants. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Executions at the Close

The Exchange believes that it is not unfairly discriminatory to modify the fees and requirements for executions at the close because the proposed changes would be provided on an equal basis to all member organizations that add liquidity to the Exchange's closing auction and would equally encourage all member organizations to provide additional liquidity on the Exchange. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The proposal does not permit unfair discrimination because the qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same fees on an equal basis. As noted, the Exchange believes that the proposed credits would provide an incentive for member organizations to send additional retail liquidity to the Exchange, to the benefit of all market participants. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Step Up Tier 2 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide an additional incremental credit and lower the requirement for member organizations to qualify for the Step Up Tier 2 Adding Credit as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up Tier 2 requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide additional incremental credits to member organizations that satisfy the Step Up Tier 2 requirements

and add liquidity in Tape A, B and C securities. Further, the Exchange believes the proposed Step Up Tier 2 credit would incentivize member organizations that meet the new lower tiered requirements to send more orders to the Exchange. Since the proposed \$0.0025 credit would be new, no member organization currently qualifies for it. As noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations that provide liquidity could be eligible to qualify for the proposed credit if meet the proposed adding liquidity requirements. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

RPI Orders

The proposal to enable non-RLP member organizations to receive a credit for all RPI executions, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by

deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations that are not RLPs and provide liquidity could be eligible to qualify for the proposed credit.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁷

Intramarket Competition. The proposed changes are designed to attract additional retail order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed and non-displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current fees and credits would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on

²⁶ 15 U.S.C. 78f(b)(8).

²⁷ Regulation NMS, 70 FR at 37498-99.

competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁸ of the Act and subparagraph (f)(2) of Rule 19b-4²⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-33 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2021-33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-33 and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11082 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91959; File No. SR-FINRA-2021-011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 1011(p) ("Specified Risk Event")

May 20, 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 12, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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

FINRA is proposing to amend FINRA Rule 1011(p) ("specified risk event"), to correct an inadvertent drafting error and clarify the "final regulatory actions" that are included in the "specified risk event" definition for purposes of the Rule 1000 Series (Member Application and Associated Person Registration). Rule 1011(p) was among the rules approved in File No. SR-FINRA-2020-011.³

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

FINRA Rules

* * * * *

1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

* * * * *

1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0160.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR-FINRA-2020-011) ("SEC Order"). FINRA announced the effective dates of the rule change in *Regulatory Notice 21-09* (March 2021).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(2).

³⁰ 15 U.S.C. 78s(b)(2)(B).

³¹ 17 CFR 200.30-3(a)(12).

(a) through (o) No Change.

(p) “specified risk event”

The term “specified risk event” means any one of the following events that are disclosed, or are or were required to be disclosed, on an applicable Uniform Registration Form: (1) through (3) No Change.

(4) a final regulatory action where: (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above \$15,000; or (B) the sanction against the person was a bar (permanently or temporarily), expulsion, rescission, revocation, or suspension[from associating with a member].

(q) through (r) No Change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

On December 10, 2020, the Commission approved a proposed rule change concerning brokers with a significant history of misconduct.⁴ The SEC Order approved, in pertinent part, the amendment of the Rule 1000 Series (Member Application and Associated Person Registration) to require a member firm to submit a written request to FINRA’s Department of Member Regulation (“Member Regulation”), through the Membership Application Group (“MAP Group”), seeking a materiality consultation and approval of a continuing membership application, if required, when a natural person seeking to become an owner, control person, principal, or registered person of the member broker-dealer has, in the prior five years, one or more “final criminal matters” or two or more “specified risk events.”⁵ The amendments to the Rule

1000 Series will become effective on September 1, 2021.⁶

The rules approved in the SEC Order relating to SR-FINRA-2020-011 included Rule 1011(p), which defines “specified risk event” to mean “any one of the . . . events” described in Rule 1011(p) “that are disclosed, or are or were required to be disclosed, on an applicable Uniform Registration Form.” The events described in Rule 1011(p) include, among others, a “final regulatory action” as set forth in Rule 1011(p)(4). Specifically, Rule 1011(p)(4) describes “a final regulatory action” to include final regulatory actions “where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above \$15,000; or (B) the sanction against the person was a bar (permanently or temporarily), expulsion, rescission, revocation, or suspension from associating with a member.”

The proposed rule change would delete from Rule 1011(p)(4) the phrase “from associating with a member,” which appears after the word “suspension.” Including “from associating with a member” in Rule 1011(p)(4) was an inadvertent drafting error that may suggest incorrectly that it narrows the “final regulatory actions” that are included in the “specified risk event” definition. For example, the current rule text may suggest that the “specified risk event” definition does not include final SEC and CFTC regulatory actions where the sanction against the person was a suspension other than a suspension from associating with a member.

However, as evidenced by other provisions in Rule 1011(p), FINRA did not intend to narrow the scope of “final regulatory actions” that are included in the “specified risk event” definition in this manner. Rule 1011(p)(4) is intended to be consistent with Rule 1011(p)(3), which describes the “final investment-related civil actions” that are included in the “specified risk event” definition. Rule 1011(p)(3) includes final investment-related civil actions that result in a “suspension,” and does not limit the suspensions to suspensions from associating with a member. Moreover, FINRA’s intent to include “final regulatory actions” beyond those resulting in suspensions “from associating with a member” in the “specified risk event” definition is further evidenced by the mapping exhibits that FINRA provided in SR-

FINRA-2020-011, which showed how the “final regulatory actions” included within the scope of the “specified risk event” definition included final regulatory actions disclosed on the Uniform Registration Forms that resulted in a “suspension.”⁷ Those mapping exhibits, in turn, were and are consistent with how the relevant sanctions-related questions on the Uniform Registration Forms require the reporting of regulatory actions initiated by numerous regulators and self-regulatory organizations—not just FINRA—and include data fields for “suspension.”⁸ By correcting the inadvertent drafting error and clarifying the “final regulatory actions” that are included in the “specified risk event” definition, the proposed rule change will ensure that the rules approved in SR-FINRA-2020-011 fully serve their intended investor-protection purposes.⁹

If the Commission approves the proposed rule change, FINRA expects that the effective date will be September 1, 2021, the same effective date for the amendments to Rule 1000 Series that FINRA announced in *Regulatory Notice* 21-09.¹⁰

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

⁷ See Form 19b-4, Exs. 3a and 3b, File No. SR-FINRA-2020-011, available at <https://www.finra.org/sites/default/files/2020-04/SR-FINRA-2020-011.pdf>.

⁸ See Uniform Application for Securities Industry Registration or Transfer (Form U4), Regulatory Action Disclosure Reporting Page, Questions 1 (requesting information about which regulator initiated the regulatory action) and 13 (Sanction Detail); Uniform Application for Broker-Dealer Registration (Form BD), Regulatory Action Disclosure Reporting Page, Part II, Questions 1 (requesting information about which regulator initiated the regulatory action) and Question 2 (Principal Sanction). FINRA also notes that the data that FINRA provided in SR-FINRA-2020-011 concerning the regulatory action disclosures included regulatory actions that resulted in any suspension, not just suspensions from associating with a member.

⁹ See SEC Order, *supra* note 3, at 81546 (explaining that the rules approved in SR-FINRA-2020-011 “further promote investor protection by applying additional safeguards and disclosure obligations for a broker-dealer’s continuing membership with FINRA and for changes to a current member broker-dealer’s ownership, control, or business operations,” where those changes involve persons with a significant history of misconduct).

¹⁰ FINRA notes that the proposed rule change would apply to all members, including members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB rule set incorporates FINRA Rule 1011 by reference.

¹¹ 15 U.S.C. 78o-3(b)(6).

⁴ See SEC Order, *supra* note 3.

⁵ See SEC Order, *supra* note 3, at 81541.

⁶ See *Regulatory Notice* 21-09 (March 2021).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that, by amending Rule 1011(p)(4) to correct an inadvertent drafting error, and fully and accurately describe the “final regulatory actions” that the definition of “specified risk event” includes, the proposed rule change will provide greater clarity to members and the public and serve the intended investor-protection purposes of the rules approved in SR-FINRA-2020-011.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change is associated with any material economic impacts or will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to correct an inadvertent drafting error in Rule 1011(p)(4) that resulted in a narrower scope for the “final regulatory actions” that are included in the “specified risk event” definition than FINRA intended.

The aspect of the economic impact assessment undertaken in File No. SR-FINRA-2020-011 that pertained to the amendments to the Rule 1000 Series was based on the broader scope for the “final regulatory actions” that are included in the “specified risk event” definition that FINRA is proposing here. Consistent with FINRA’s initial intent, the broader scope for the “final regulatory actions” that are included in the “specified risk event” definition includes, for example, final SEC and CFTC regulatory actions where the sanction against the person was a suspension other than a suspension from associating with a member.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-011 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-FINRA-2021-011. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2021-011 and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11077 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91961; File No. SR-NASDAQ-2020-062]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Listing Rules Applicable to Special Purpose Acquisition Companies Whose Business Plan Is To Complete One or More Business Combinations

May 20, 2021.

I. Introduction

On September 3, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to amend its listing rules to permit companies whose business plan is to complete one or more business combinations (“SPACs” or “Acquisition Companies”) 15 calendar days following the closing of a business combination to demonstrate that the SPAC has satisfied the applicable round lot shareholder requirement. The proposed rule change was published for comment in the **Federal Register** on September 22, 2020.³

On November 4, 2020, pursuant to Section 19(b)(2) of the Exchange 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

¹² 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. 89897 (September 16, 2020), 85 FR 59574 (“Notice”). Comments received on the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2020-062/srnasdaq2020062.htm>. See also, *infra*, note 8.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90340, 85 FR 71704 (November 10, 2020). The Commission designated December 21, 2020, as the date by which it should approve, disapprove, or institute

On December 16, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change (“OIP”).⁷ On February 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on March 16, 2021.⁸ On March 18, 2021, the Commission designated a longer period for Commission action on the proposed rule change.⁹

This order disapproves the proposed rule change, as modified by Amendment No. 1, because, as discussed below, Nasdaq has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of Section 6(b)(5) of the Exchange Act, and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.¹⁰

II. Description of the Proposal, as Modified by Amendment No. 1

A SPAC is a company with no operations whose business plan is to complete an initial public offering and then subsequently engage in a merger or acquisition with one or more unidentified operating companies within a specific period of time.¹¹ Nasdaq listing rules, among other things, require a SPAC to keep at least 90% of the proceeds from its initial public offering in an escrow account,¹² and to complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account within a specified period of time.¹³ Following each business combination, the combined company must meet the requirements

proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 90682, 85 FR 83113 (December 21, 2020).

⁸ See Securities Exchange Act Release No. 91294 (March 10, 2021), 86 FR 14508 (March 16, 2021) (“Notice II”). Comments received in response to Amendment No. 1 to the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2020-062/srnasdaq2020062.htm>.

⁹ See Securities Exchange Act Release No. 91348, 86 FR 15747 (March 24, 2021).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (order approving the predecessor rule to IM–5101–2).

¹² See Nasdaq IM–5101–2(a).

¹³ See Nasdaq IM–5101–2(b).

for initial listing on Nasdaq¹⁴ including those requiring a minimum number of round lot shareholders (the “Shareholder Requirement”).¹⁵ If the combined company does not meet all the initial listing requirements following a business combination, Nasdaq listing rules currently provide that Nasdaq staff will issue a Staff Delisting Determination.¹⁶

In its proposal, Nasdaq acknowledges that its existing rules require that, “following each business combination” with a SPAC, the resulting company must satisfy all initial listing requirements. Nasdaq states, however, that the rule does not provide a timetable for the company to demonstrate that it satisfies those requirements. Accordingly, Nasdaq proposes to modify the rule to specify if the SPAC demonstrates that it will satisfy all requirements except the applicable Shareholder Requirement, then the SPAC will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable Shareholder Requirement immediately following the transaction’s closing. In addition, Nasdaq proposes to require that a company relying on this 15-day grace period publicly announce, prior to the business combination, on a Form 8–K, where required by SEC rules, or by issuing a press release, that it has not yet demonstrated compliance with the Shareholder Requirement and is subject to delisting if it cannot do so within the requisite time frame.¹⁷

¹⁴ See Nasdaq IM–5101–2(d). If a shareholder vote on the business combination is held, public shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the escrow account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. *Id.* If a shareholder vote on the business combination is not held, the company must provide all shareholders with the opportunity to redeem their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes). See Nasdaq IM–5101–2(e).

¹⁵ Nasdaq has three listing tiers, each of which require, among other things, a company to have a minimum number of shareholders in order to initially list on the Exchange. See Nasdaq Rule 5315 (f)(1) (on Global Select, an issuer must have at least 550 Total Holders with a minimum average monthly trading volume over the prior 12 months, 2,200 Total Holders, or 450 Round Lot Holders with 50% of holders holding Unrestricted Securities); Nasdaq Rule 5405(a)(3) (on Global, an issuer must have at least 400 Round Lot Holders with 50% of holders holding Unrestricted Securities); and Nasdaq Rule 5505(a)(3) (on Capital, an issuer must have at least 300 Round Lot Holders with at least 50% of holders holding Unrestricted Securities).

¹⁶ See Nasdaq IM–5101–2(d).

¹⁷ See Notice II of Amendment No. 1, *supra* note 8.

Finally, Nasdaq proposes to halt trading in the securities if the company fails to make this public announcement.¹⁸

Nasdaq states that it ordinarily determines compliance with the Shareholder Requirement at the time of a business combination by reviewing a company’s public disclosures and information provided by the company about the transaction.¹⁹ According to Nasdaq, if it cannot determine compliance using public information, it will typically request the company to provide additional information such as registered shareholder lists from the company’s transfer agent, data from Cede & Co. about shares held in street name, or data from broker-dealers and third parties that distribute information such as proxy materials for the broker-dealers. If the company can provide information demonstrating compliance before the business combination closes, Nasdaq states that no further information would be required.

However, Nasdaq states that it has observed that in some cases it can be difficult for a company to obtain evidence demonstrating the number of shareholders that it has or will have following a business combination. Nasdaq states that shareholders in a SPAC may redeem or tender their shares until just before the time of the business combination, and the SPAC may not know how many shareholders will choose to redeem until very close to the consummation of the business combination.²⁰ Nasdaq states that this could impact its ability to determine compliance before the business combination closes, in cases where the number of round lot shareholders is close to the applicable requirement.

Nasdaq states that under its proposal the SPAC must still demonstrate that it satisfied the round lot shareholder requirement immediately following the business combination, and that the proposal merely would give the SPAC 15 calendar days to provide evidence that it had met the Shareholder Requirement. Nasdaq also states that it believes that the proposed public disclosure requirement will help provide transparency to investors about the status of the company during the additional time period it has to evidence

¹⁸ See *id.*

¹⁹ Nasdaq states, for example, that the merger agreement may result in the Acquisition Company issuing a round lot of shares to more than 300 holders of the target of the business combination at closing.

²⁰ The Exchange notes that SPACs are unlike other newly listing companies which do not face redemptions and are not already listed and trading at the time they must demonstrate compliance.

compliance with the Shareholder Requirement.²¹

Nasdaq believes that the proposal “balances the burden placed on the Acquisition Company to obtain accurate shareholder information for the new entity and the need to ensure that a company that does not satisfy the initial listing requirements following a business combination enters the delisting process promptly.”²² Nasdaq states that if the company does not evidence compliance within the proposed time period, Nasdaq staff would issue a Staff Delisting Determination, which the company could then appeal to an independent hearings panel.²³

The Commission received two comment letters opposing the proposal from the Council of Institutional Investors.²⁴ The commenter stated that additional information from Nasdaq in response to the OIP would be helpful in determining whether the proposed rule change is consistent with the Exchange Act, and questioned whether a loosening of SPAC listing standards is consistent with the protection of investors and the public interest.²⁵ More broadly, the commenter referenced a recent study that it believes finds that SPACs and their officers and directors face limited liability to investors for material misstatements in, or omissions from, their registration statements, and that SPAC structures generally create losses for long-term investors.²⁶ Finally, the commenter referenced the study’s suggestion that the regulatory treatment for SPACs should be generally equivalent to that for direct listings and questioned whether Nasdaq’s proposal would lead to a pro-SPAC bias.²⁷ The Exchange responded to CII Letter I that the proposal would not loosen SPAC listing standards because under its proposal SPACs would still have to comply with the Shareholder Requirement at the time of the business combination and would just be provided an additional 15 days after completing their business combination

²¹ See Notice II of Amendment No. 1, *supra* note 8.

²² The Exchange also states that shareholders of the SPAC would be harmed if Nasdaq issued a delisting determination at a time when the company did, in fact, satisfy all initial listing requirements but could not yet provide proof.

²³ The Exchange has also proposed to eliminate a duplicative paragraph and add a new subsection enumeration to its existing rule.

²⁴ See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (January 7, 2021) (“CII Letter I”); Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (March 25, 2021) (“CII Letter II”).

²⁵ See CII Letter I, *supra* note 24.

²⁶ *Id.*

²⁷ See CII Letter II, *supra* note 24.

to demonstrate such compliance.²⁸ The Exchange further stated that its proposal will provide transparency and does not pose any additional risk to the protection of shareholders.²⁹

III. Discussion and Commission Findings

The Commission must consider whether Nasdaq’s proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Exchange Act, which requires, in relevant part, that the rules of a national securities exchange be designed “to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”³⁰ 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.”³¹

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,³² 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

²⁸ See Letter from Arnold Golub, Vice President and Deputy General Counsel, (February 25, 2021) (“Nasdaq Letter”).

²⁹ *Id.*

³⁰ 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that “[t]he rules of the exchange are 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.” 15 U.S.C. 78f(b)(5).

³¹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³² See *id.*

applicable rules and regulations.³³ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.³⁴

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements stating that such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.³⁵ The Shareholder Requirement also helps to ensure that trading in exchange-listed securities is not susceptible to manipulation.³⁶

As discussed above, Nasdaq is proposing to: (1) Allow a SPAC 15 calendar days following the closing of a business combination to demonstrate that it satisfied the applicable Shareholder Requirement immediately following the transaction’s closing, and (2) require a SPAC relying on the additional 15 day period to publicly announce, prior to the listing of the combined company, that it has not demonstrated compliance with the Shareholder Requirement and is subject to delisting if it cannot do so within the requisite time period. Nasdaq states that it can be difficult for a SPAC to obtain evidence demonstrating the number of holders the SPAC will have following its business combination because SPAC shareholders have the right to redeem or tender their shares until just before the time of such business combination. Further, Nasdaq states that, given the uncertainty around the number of redemptions and ongoing trading through the closing of the business combination, it may not be possible for

³³ See *id.*

³⁴ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

³⁵ The Commission considers distribution standards, including minimum number of holders and number of shares outstanding requirements, to be important means of promoting fair and orderly markets. See, e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17) (stating that the distribution standards, which includes exchange holder requirements “. . . should help to ensure that the [Acquisition Companies] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets”); Securities Exchange Act Release No. 86117 (June 14, 2019), 84 FR 28879 (June 20, 2018) (SR-NYSE-2018-46) (disapproving a proposal to reduce the minimum number of public holders continued listing requirement applicable to Acquisition Companies from 300 to 100).

³⁶ See, e.g., Securities Exchange Act Release Nos. 91236 (March 2, 2021), 86 FR 13414 (March 8, 2021) (SR-NYSEArca-2020-56) and 90819 (December 29, 2020), 86 FR 332 (January 5, 2021) (SR-ChoeBZX-2020-036).

the SPAC to definitively establish that it will satisfy the Shareholder Requirement before completing the combination. In addition, Nasdaq states that, while other companies cannot become listed until they demonstrate compliance with the Shareholder Requirement, SPACs completing business combinations are already listed and, without more time, would be the only type of company to face immediate delisting as a result of these difficulties. Finally, Nasdaq states that 21 of the 49 SPAC business combinations processed by Nasdaq during 2019 and 2020 needed additional time to demonstrate compliance with the Shareholder Requirement.

Nasdaq emphasizes that, under its proposal, the SPAC must still demonstrate that it satisfied the applicable Shareholder Requirement immediately following the business combination, and is simply being provided 15 calendar days to provide evidence that it did. However, Nasdaq has not explained the extent to which the 21 SPACs that needed additional time to demonstrate compliance in 2019 and 2020 actually were in compliance with the shareholder requirement immediately following the closing of the business combination, or instead were not in compliance and needed additional time to acquire the requisite number of shareholders. If the former, Nasdaq has not explained why, like newly-listed companies in advance of their public offerings, the SPAC could not provide preliminary evidence of its compliance with the Shareholder Requirement in advance of the business combination, or why last minute shareholder redemptions would impact that evidence. If the latter, then the SPACs in fact were not in compliance with the Shareholder Requirement at the time of the business combination, and do not provide support for Nasdaq's proposal, which is premised on the assumption that such SPACs simply needed additional time to evidence their compliance.

More broadly, Nasdaq does not explain how its proposal addresses the regulatory risks to fair and orderly markets, investor protection and the public interest, and the manipulation concerns if companies initially list, and can continue to trade, on the Exchange without meeting the Shareholder Requirement. Notably, and as discussed in the OIP, Nasdaq has not addressed the risk that, by waiting for SPACs to demonstrate compliance with the Shareholder Requirement until after the closing of the business combination, non-compliant companies could be listed on the Exchange despite not

meeting initial listing standards, and have their securities continue to trade until the delisting process has been completed. In such circumstances, a SPAC could complete a business combination and very soon thereafter be subject to delisting proceedings, and during such time its securities may continue to trade with a number of holders that is substantially less than the required minimum raising concerns about the maintenance of fair and orderly markets and investor protection.

While Nasdaq has amended its proposal to require certain public disclosure, the Commission does not believe the disclosure required by the proposed rule adequately addresses the potential risks associated with trading during a time period in which the minimum number of round lot shareholders may not be present, nor has Nasdaq explained why subjecting shareholders to this potential risk is consistent with the protection of investors and the public interest, and the other requirements of Section 6(b)(5) of the Exchange Act.³⁷

As stated above, 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."³⁸ 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.³⁹ For the reasons discussed above, the Commission concludes that, because Nasdaq has not demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices or to protect investors and the public interest, Nasdaq has not met its burden to demonstrate that its proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b)(5) of the

Exchange Act.⁴⁰ For this reason, the Commission must disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,⁴¹ that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.⁴²

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–Nasdaq–2020–062 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–11099 Filed 5–25–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91952; File No. SR–NYSEArca–2021–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of ConvexityShares 1x SPIKES Futures ETF Under NYSE Arca Rule 8.200–E (Trust Issued Receipts)

May 20, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b–4 thereunder,³ notice is hereby given that on May 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁴⁰ In disapproving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 15 U.S.C. 78f(b)(5).

⁴³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

³⁷ The Commission notes that the commenter continued to oppose the proposal after Nasdaq amended it to require this public disclosure. See CII Letter II, *supra* note 24.

³⁸ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁹ See *id.*

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200–E, Commentary .02 (“Trust Issued Receipts”): ConvexityShares 1x SPIKES Futures ETF. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: ConvexityShares 1x SPIKES Futures ETF (the “Fund”).⁴

The Fund is a series of the ConvexityShares Trust (the “Trust”), a Delaware statutory trust.⁵ The Fund is

⁴ Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁵ On December 15, 2020, ConvexityShares Trust submitted to the Commission its draft registration statement, with respect to the Trust, on Form S–1 (“Registration Statement”) under the Securities Act of 1933 (“1933 Act”). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the 1933 Act. Section 6(e) of the 1933 Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in 1933 Act Rule 433(h)(4). An emerging growth company is defined

managed and controlled by its sponsor and investment manager, ConvexityShares, LLC (the “Sponsor”). The Fund is a commodity pool and the Sponsor is a commodity pool operator subject to regulation by the Commodity Futures Trading Commission (“CFTC”) and the National Futures Association under the Commodity Exchange Act, as amended. U.S. Bank, a national banking association, will provide custody and fund accounting to the Trust and the Fund. Its affiliate, U.S. Bancorp Fund Services, will be the transfer agent (“Transfer Agent”) for Fund Shares and administrator for the Fund. Foreside will serve as the distributor for the Fund (“Distributor”).

According to the Registration Statement, the Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (the “Index”), an investable index of SPIKES futures contracts. The Fund will seek to offer exposure to forward equity market volatility by obtaining exposure to the components of the Index. The Index, as described further below, is intended to reflect the returns that are potentially available through an unleveraged investment in the SPIKES futures contracts comprising the Index.⁶ The Index consists of short-term SPIKES futures contracts and measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).⁷ The SPIKES Index is

in Section 2(a)(19) of the 1933 Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Registration Statement on a confidential basis with the Commission. The Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

⁶ The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as “T3 Index” or the “Index Sponsor”). T3 Index maintains a website at <https://t3index.com/>. The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event the Sponsor becomes registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to and dissemination of material non-public information regarding the Index.

⁷ T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International

a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF⁸ Trust (“SPY”).⁹ The Fund is not benchmarked to the SPIKES Index.

The Index is owned and maintained by T3 Index and is calculated and published by Solactive AG (“Solactive”). Solactive is not affiliated with T3 Index. The Index value calculated at the end of each business day will be available at www.convexityshares.com. The Fund’s website will also provide information regarding the SPIKES futures contracts constituting the Index and the Index methodology. Futures contracts on the SPIKES Index, which futures comprise the Index, are traded on the Minneapolis Grain Exchange, LLC (“MGEX”) via the CME Globex[®] platform.

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that corresponds to one times (1x) the performance of the Index for a single day. A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. The NAV calculation time for the Fund is typically is 4:00 p.m. (Eastern Time (“E.T.”)). The NAV will be calculated by taking the current market value of the Fund’s total assets (after the close of the NYSE Arca Core Trading Session (normally, 4:00 p.m., E.T.)), subtracting any liabilities, and dividing that total by the total number of outstanding Shares.

Description of the Index

According to the Registration Statement, the Index employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures

Securities Exchange, LLC (“MIAX”) via the Options Price Reporting Authority.

⁸ SPDR S&P 500 ETF Trust is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). Shares of the SPDR S&P 500 ETF Trust trade on the Exchange under the symbol “SPY.”

⁹ According to the Registration Statement, the market’s current expectation of the possible rate and magnitude of movements in an index is commonly referred to as the “implied volatility” of the index. For these purposes, “implied volatility” is a measure of the expected volatility of SPY over the next 30 days. The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options.

contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement¹⁰ program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month. The rules applicable to the Index are subject to change by T3 Index.

The level of the Index is published by one or more major market data vendors in real time at least once every 15 seconds and at the close of trading in the Exchange's Core Trading Session (normally 4:00 p.m., E.T.) on each business day.

The Index is comprised solely of SPIKES futures contracts. SPIKES futures contracts were launched for trading by MGEX, via the CME Globex® platform, on December 14, 2020. According to the Registration Statement, SPIKES futures contracts allow investors to invest based on their view of the forward implied market volatility of SPY. Investors that believe the forward implied market volatility of SPY will increase may buy SPIKES futures contracts. Conversely, investors that believe that the forward implied market volatility of SPY will decline may sell SPIKES futures contracts. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

SPIKES Index

According to the Registration Statement, the SPIKES Index is an index designed to measure the implied volatility of SPY over 30 days in the future. The SPIKES Index is calculated based on the prices of certain put and

¹⁰ A Trade at Settlement ("TAS") is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contract month. TAS transactions are permitted in the SPIKES futures contract as outright or spread transactions. TAS transactions are available for trading only during the regular Hours of Trading of 8:30 a.m.–2:58 p.m. Central Time. However, TAS transactions in an expiring SPIKES futures contract are not permitted during the Business Day of its final settlement date. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>. The term "Business Day" means a day when MGEX is open for business, and the term "Hours of Trading" means the hours, on business days, established by MGEX Rules for trading. See MGEX Rules, Chapter 1.

call options on SPY. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. The SPIKES Index is reported by Bloomberg Finance L.P. and Reuters under the ticker symbol "SPIKE." The SPIKES Index is calculated and disseminated every 100 milliseconds.

Investment Objectives and Strategies

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that corresponds to one times (1x) the performance of the Index for a single day. The Fund is benchmarked to the Index, which is comprised of SPIKES futures contracts, and will seek to offer exposure to market volatility through publicly traded futures markets.

Under normal market conditions,¹¹ the Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances, the Fund may also invest in futures contracts and swap contracts ("VIX Relation Positions") on the Cboe Volatility Index ("VIX"),¹² an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

In seeking to achieve the Fund's investment objective, the Sponsor will use a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investments that the Sponsor believes, in combination, should produce daily returns consistent with the Fund's objective.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly invest in the SPIKES Index. In addition, under specified circumstances described below, the Fund may invest in VIX Related Positions.

In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures

¹¹ The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹² The VIX Index is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

contracts, the Sponsor may cause the Fund to invest in VIX Related Positions. According to the Registration Statement, the Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts.¹³ In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.

The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares from time to time in one or more "Creation Units" or "Redemption Units" (together, "Units"). A Unit consists of 25,000 Shares. The size of a Unit is subject to change. The creation and redemption of Units are made in exchange for delivery to the Fund or the distribution by the Fund of the amount of cash represented by the Units being created or redeemed, the amount of which is based on the combined NAV of the number of Shares included in the Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Units is properly received. If permitted by the Sponsor in its sole discretion with respect to the Fund, an "Authorized Participant" may also agree to enter into or arrange for an exchange of a futures contract for related position ("EFCRP") or block trade with the Fund whereby the Authorized Participant would also transfer to the Fund a number and type of exchange-traded futures contracts at or near the closing settlement price for such contracts on the purchase order date. Similarly, the Sponsor in its sole discretion may agree with an Authorized Participant to use an EFCRP to effect an order to redeem Units.¹⁴ All APs would be able to use

¹³ Futures on the VIX are traded on the Cboe Futures Exchange.

¹⁴ According to the Registration Statement, an EFCRP is a technique permitted by the rules of certain futures exchanges that, as utilized by the Fund in the Sponsor's discretion, would allow the Fund to take a position in a futures contract from an Authorized Participant, or give futures contracts to an Authorized Participant, in the case of a

an EFCRP to effect orders to create or redeem Units.

Authorized Participants are the only persons that may place orders to create and redeem Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company participants.

Creation Procedures

According to the Registration Statement, on any business day, an Authorized Participant may place an order to create one or more Units.¹⁵ Purchase orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Purchase orders are irrevocable.

The total payment required to create each Creation Unit is the NAV of 25,000 Shares on the purchase order date.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Units mirror the procedures for the creation of Units. On any business day, an Authorized Participant may place an order with the Transfer Agent, and accepted by the Distributor, to redeem one or more Units. Redemption orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Redemption orders are irrevocable.

Upon request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an EFCRP or to a block trade sale of futures contracts to the Authorized Participant.

Determination of Redemption Proceeds

The redemption proceeds from the Fund consist of the cash redemption amount and, if permitted by the Sponsor in its sole discretion with respect to the Fund, an EFCRP or block trade with the Fund as described above. The

redemption, rather than to enter the futures exchange markets to obtain such a position.

¹⁵ For purposes of processing purchase and redemption orders for the Fund, a "business day" means any day other than a day when any of NYSE Arca, the New York Stock Exchange, MGEX or other exchange material to the valuation or operation of the Fund, or the calculation of the SPIKES Index, options contracts underlying the SPIKES Index, SPIKES futures contracts or the Index is closed for regular trading.

redemption proceeds from the Fund consist of a cash redemption amount equal to the NAV of the number of Units requested in the Authorized Participant's redemption order on the redemption order date, less transaction fees and any amounts attributable to any applicable EFCRP or block trade.

Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, an updated "Indicative Fund Value" ("IFV") will be calculated. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updating throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the approximate aggregate per Share value of the investments held by the Fund based on the most recently available prices for the Fund's investments. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The IFV will be readily available from the Fund's website, automated quotation systems, published or other public sources, or major market data vendors' website or on-line information services.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. each day. In addition, the Fund's website, www.convexityshares.com, will display the end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website before 9:30 a.m. E.T. each day. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based, (iii) the market value of each investment held by the Fund, (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio. The Fund's website will be publicly accessible at no charge.

The Fund's website will include a form of the prospectus that may be downloaded. The Fund's website will

include additional quantitative information updated on a daily basis, including, trading volume, the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁶ and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

This website disclosure of the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at approximately the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Fund through the Fund's website.

Complete real-time data for SPIKES futures contracts is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters. The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

¹⁶ The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹⁷ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares or disclosure of the Fund's daily holdings is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV and the Fund's daily holdings is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. With respect to the application of Rule 10A–3¹⁸ under the

Act, the Fund will rely on the exception contained in Rule 10A–3(c)(7).¹⁹ The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed

¹⁹ See Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

²⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").²¹ The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the Index, portfolio holdings and reference assets, (b) limitations on Index or portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²² that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule

²¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

²² 15 U.S.C. 78f(b)(5).

¹⁷ See NYSE Arca Rule 7.12–E.

¹⁸ 17 CFR 240.10A–3.

8.200–E.²³ The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. E.T. each day. Complete real-time data for SPIKES futures contracts is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters. The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap

contracts may be obtained from brokers and dealers who make markets in such instruments. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Trust Issued Receipts based on prices related to market volatility that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Trust Issued Receipts based on prices related to market volatility and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2021–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–29 and should be submitted on or before June 16, 2021.

²³ The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 (17 CFR 240.10A–3) under the Act, as provided by NYSE Arca Rule 5.3–E.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11078 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91958; File No. SR-MSRB-2021-03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rule A-8 and the By-Laws of the Municipal Securities Rulemaking Board To Update Descriptions of Board Rulemaking Processes and Eliminate Redundant or Obsolete Provisions

May 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2021 the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule A-8, relating to rulemaking procedures, and parallel amendments to Article 8 of the By-Laws of the Municipal Securities Rulemaking Board (“Bylaws”), which reproduces MSRB Rule A-8 (the “proposed rule change”). The MSRB has designated the proposed rule change as “concerned solely with the administration of the self regulatory organization” under Section 19(b)(3)(A)(iii) of the Act ³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. As described below, the proposed rule change would update

descriptions of Board rulemaking processes and eliminate redundant or obsolete provisions.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MSRB rulemaking is governed by Section 19 of the Exchange Act ⁵ and Rule 19b-4 thereunder, which describe the processes self-regulatory organizations must follow to file proposed rule changes with the Commission. MSRB Rule A-8 reflects, and to some extent incorporates, these requirements and includes provisions that describe Board processes for complying with them. The proposed rule change is intended to update these provisions and reduce unnecessary complexity, as follows.

Eliminating Unnecessary Descriptions of Statutory Requirements

Section (a) of MSRB Rule A-8 notes the statutory requirements with which the Board must comply when it adopts rules and also restates the statutory authority granted to the Board in Section 15B(b) of the Exchange Act.⁶ While referencing the Board’s statutory authority in section (a) is useful to provide context for what follows, the more detailed description adds unnecessary length and complexity. The proposed rule change streamlines the section by deleting the detailed description but does not change the substance of the rule. The proposed rule change further improves the readability of section (a) by moving the sentence

describing who must sign rule filings— a separate topic—into a new section (b).

Removing Outdated or Obsolete References

Current section (b) of MSRB Rule A-8 (section (c) in the proposed rule change) notes that the Board may “render or cause to be rendered advisory opinions and interpretations of rules of the Board at the request of any interested person.”⁷ The proposed rule change removes the reference to “advisory opinions,” a term that the Board once used, but no longer uses, to describe certain interpretations. Removing this reference would eliminate the potential for confusion about the meaning of the term without limiting the kinds of interpretive and other materials relating to rulemaking that the Board may issue.⁸

In addition, because the Board may interpret its rules on its own initiative, in addition to upon request, the proposed rule change removes the reference to “the request of any interested person.” Finally, the proposed rule change replaces the words “render” and “rendered” in the first sentence with “issue” and “issued” and revises the second sentence to say that interpretations shall “be consistent with,” rather than “represent,” the Board’s intent in adopting the rules being interpreted. The Board believes that the new phrasing is clearer.

Current section (c) of MSRB Rule A-8 provides that the Board may approve procedures relating to the administration of MSRB rules pursuant to MSRB Rule A-4(d), which describes requirements for taking Board action without a meeting. Current Rule A-8(c) also provides that such procedures can take effect no earlier than 10 business days after publication and that regulated entities are subject to these procedures in the same manner as they are subject to the rules of the Board.

Adopted at a time when the Board’s rules required the Board to approve changes to Board rules at a meeting of the Board (rather than through action without a meeting), Rule A-8(c) permitted the Board to approve minor changes to an MSRB form, for example, without a meeting. Because the Board’s

⁷ The Board is currently engaged in a retrospective review of the catalogue of interpretive guidance in its rule book. The multi-year initiative is intended to streamline and modernize the rule book by clarifying, amending and/or retiring guidance that no longer achieves its intended purposes. See MSRB Notice 2021-02 (February 11, 2021).

⁸ Depending on its substance, an interpretation may be deemed to be a proposed rule change pursuant to Exchange Act Rule 19b-4, in which case it must be filed with the Commission.

²⁴ 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)(3).

⁵ 15 U.S.C. 78s.

⁶ 15 U.S.C. 78o-4(b).

rules have for some time allowed it to take any permissible action, including actions relating to rulemaking, without a meeting,⁹ this section is obsolete and the proposed rule change deletes it.

Better Reflecting Current Transparency Practices

Section (d) of MSRB Rule A-8 directs the Board to establish procedures to provide “access by all interested persons to rules of the Board and other official Board action.” As required by Exchange Act Rule 19b-4(m)(1),¹⁰ the Board posts and maintains a complete version of its rules on its website available for the public to access. The proposed rule change amends section (d) to mirror that requirement and current practice.

Bylaws

Article 8 of the Bylaws reproduces MSRB Rule A-8. Accordingly, the proposed rule change amends the Bylaws to mirror amended MSRB Rule A-8.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)¹¹ and 15B(b)(2)(I)¹² of the Exchange Act.

Section 15B(b)(2) provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(I) of the Exchange Act provides that MSRB rules shall “provide for the operation and administration of the Board. . . .”

Statutory Basis for Proposed Amendments To Eliminate Unnecessary Descriptions of Statutory Requirements

The proposed amendment to MSRB Rule A-8(a) that deletes the detailed

⁹ MSRB Rule A-4(d) provides that action by the Board may be taken without a meeting by unanimous written consent. As the Board noted when it last amended MSRB Rule A-4(d), “[t]he Board takes action without a meeting infrequently, generally when a matter requires prompt attention in between scheduled meetings and circumstances preclude convening a special meeting.” Exchange Act Release No. 89998 (September 25, 2020); 85 FR 62001, 62002 (October 1, 2020); File No. SR-MSRB 2020-05.

¹⁰ 17 CFR 240.19b-4(m)(1).

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(I).

description of the Board’s statutory authority is consistent with Section 15B(b)(2) of the Exchange Act, which grants that authority. As amended, MSRB Rule A-8(a) will continue to state, as Section 15B(b)(2) does, that the Board shall propose and adopt rules to effect the purposes of the Exchange Act. Because the Board remains subject to the detailed description of the Board’s statutory authority in Section 15B(b)(2) of the Exchange Act, it is unnecessary, and potentially confusing, to duplicate or restate that description in the rule.

In addition, both the proposed amendment to MSRB Rule A-8(a) that deletes the detailed description of the Board’s statutory authority and the amendment to MSRB Rule A-8(a) that moves the last sentence into a new subsection are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. MSRB Rule A-8 is an administrative rule that describes the Board’s processes for carrying out its statutory rulemaking responsibilities. Improving the readability of the rule should enhance the transparency of those processes.

Statutory Basis for Proposed Amendments That Remove Outdated or Obsolete References

The proposed amendments to current section (b) (section (c) in the proposed rule change) of MSRB Rule A-8 that update the description of the Board’s process for interpreting its rules are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. These amendments should improve transparency about Board processes by aligning the rule more closely to the Board’s current practices.

The proposed amendment to delete current section (c) of MSRB Rule A-8 is also consistent with Section 15B(b)(2)(I) of the Exchange Act for the same reason. While section (c) provided for the operation and administration of the Board because it provided a Board process for the Board to approve certain procedures, that process is now obsolete. Deleting it from the rule should improve transparency and reduce the potential for confusion about the administrative processes the Board follows to take action related to rulemaking.

Statutory Basis for Proposed Amendments To Better Reflect Current Transparency Practices

The proposed amendments to section (d) of MSRB Rule A-8 are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for

the operation and administration of the Board. Specifically, these amendments update the description of how the Board provides access to its rules. Updating that description to more closely align with current practice and the requirements of Exchange Act Rule 19b-4(m)(1) should enhance clarity about Board processes.

Statutory Basis for Proposed Amendments to Bylaws

The proposed amendments to the Bylaws are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. Specifically, the proposed amendments ensure that the Bylaws reflect, and are consistent with, the change to MSRB Rule A-8.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³ The proposed rule change relates only to the administration of the Board and would not impose or alter requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.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

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

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-MSRB-2021-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2021-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2021-03 and should be submitted on or before June 16, 2021.

For the Commission, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11084 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91960; File No. SR-Phlx-2021-31]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3

May 20, 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 12, 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 the Exchange's pricing schedule at Equity 7, Section 3, as described further below.

The Exchange originally filed the proposal pricing change on May 3, 2021 (SR-Phlx-2021-29). On May 12, 2021, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at <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 its pricing schedule, at Equity 7, Section 3, to make a change to its fees for routing of orders using the SCAR routing option in all securities. Specifically, the Exchange proposes to lower the \$0.0025 per share executed credit that is given to a member that enters an order in any of the three tapes using the "SCAR" routing option³ which ultimately executes on Nasdaq BX ("BX").

BX recently revised its pricing schedule to lower its existing credits.⁴ Currently, all credits provided to members on BX are lower than \$0.0025 per share executed. As a result, the Exchange is proposing to lower its existing \$0.0025 per share credit to \$0.0016 per share executed for SCAR orders that execute on BX in order to better align this amount with the credit amount provided by BX on its fee schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange's proposed changes to its SCAR routing rebate are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction

³ Pursuant to Equity 4, Section 3315(a)(1)(A)(x), "SCAR" is a routing option under which orders will check the System for available shares and simultaneously route to BX and Nasdaq in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

⁴ Securities Exchange Act Release No. 91639 (April 22, 2021), 80 FR 22500, (April 28, 2021).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”⁷

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes it is reasonable to lower the \$0.0025 per share executed credit that it provides to a member that enters a SCAR routed order that executes on BX because the proposal will better align this credit with corresponding credits that BX provides to its own members that remove liquidity from that exchange.⁹ The

Exchange also believes that it is appropriate to periodically reassess and recalibrate its fees. In this instance, better aligning the credits will help to ensure that market participants will not use the Exchange’s SCAR order routing strategy solely to obtain a higher rebate on orders that are routed and executed on BX.

The Proposal Is an Equitable Allocation of Credits and Not Unfairly Discriminatory

The Exchange believes its proposal to lower its credit for SCAR routed orders that execute on BX to \$0.0016 per share executed credit is an equitable allocation because the proposed amended credit amount is better aligned with the liquidity removal credits that BX provides to its members. Additionally, the proposal is not unfairly discriminatory because the proposed amended credit is available to all members.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposal will merely ensure that the amount of the SCAR credit is better aligned with the recently lowered corresponding credits that BX provides to its own members that remove liquidity from that exchange.

As noted above, all members of the Exchange will benefit from the protection of the overall quality of the equity market. Moreover, members are free to trade on other venues to the extent they believe that the proposed credit amount is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

The Exchange’s proposal is pro-competitive in that the proposal will result in competitive alignment between the SCAR credit and the amounts of liquidity removal credits that BX

provides to its own members that remove liquidity from that exchange.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial 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

The foregoing rule change has become effective pursuant to Section

19(b)(3)(A)(ii) of the Act.¹⁰

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-Phlx-2021-31 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-2021-31*. This file number should be included on the subject line if email is used. To help the Commission process and review your

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ See Nasdaq BX Equity 7 (Pricing Schedule), available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Equity%207> [sic].

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-2021-31 and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11076 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91949; File No. SR-NYSEArca-2021-28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of ConvexityShares Daily 1.5x SPIKES Futures ETF Under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

May 20, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on May 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200-E, Commentary .02 ("Trust Issued Receipts"): ConvexityShares Daily 1.5x SPIKES Futures ETF. The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: ConvexityShares Daily 1.5x SPIKES Futures ETF (the "Fund").⁴

The Fund is a series of the ConvexityShares Trust (the "Trust"), a Delaware statutory trust.⁵ The Fund is

⁴ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁵ On December 15, 2020, ConvexityShares Trust submitted to the Commission its draft registration statement, with respect to the Trust, on Form S-1 ("Registration Statement") under the Securities Act of 1933 ("1933 Act"). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the 1933 Act. Section 6(e) of the

managed and controlled by its sponsor and investment manager, ConvexityShares, LLC (the "Sponsor"). The Fund is a commodity pool and the Sponsor is a commodity pool operator subject to regulation by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association under the Commodity Exchange Act, as amended. U.S. Bank, a national banking association, will provide custody and fund accounting to the Trust and the Fund. Its affiliate, U.S. Bancorp Fund Services, will be the transfer agent ("Transfer Agent") for Fund Shares and administrator for the Fund. Foreside will serve as the distributor for the Fund ("Distributor").

According to the Registration Statement, the Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (the "Index"), an investable index of SPIKES futures contracts. The Fund will seek to offer exposure to forward equity market volatility by obtaining exposure to the components of the Index. The Index, as described further below, is intended to reflect the returns that are potentially available through an unleveraged investment in the SPIKES futures contracts comprising the Index.⁶ The Index consists of short-term SPIKES

1933 Act provides that an "emerging growth company" may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in 1933 Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the 1933 Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Registration Statement on a confidential basis with the Commission. The Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

⁶ The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as "T3 Index" or the "Index Sponsor"). T3 Index maintains a website at <https://t3index.com/>. The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event the Sponsor becomes registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to and dissemination of material non-public information regarding the Index.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

futures contracts and measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).⁷ The SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF⁸ Trust (“SPY”).⁹ The Fund is not benchmarked to the SPIKES Index.

The Index is owned and maintained by T3 Index and is calculated and published by Solactive AG (“Solactive”). Solactive is not affiliated with T3 Index. The Index value calculated at the end of each business day will be available at www.convexityshares.com. The Fund’s website will also provide information regarding the SPIKES futures contracts constituting the Index and the Index methodology. Futures contracts on the SPIKES Index, which futures comprise the Index, are traded on the Minneapolis Grain Exchange, LLC (“MGEX”) via the CME Globex[®] platform.

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that correspond to one-and-a-half times (1.5x) the performance of the Index for a single day. A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. The NAV calculation time for the Fund is typically is 4:00 p.m. (Eastern Time (“E.T.”)). The NAV will be calculated by taking the current market value of the Fund’s total assets (after the close of the NYSE Arca Core Trading Session (normally, 4:00 p.m., E.T.)), subtracting any liabilities, and dividing that total by the total number of outstanding Shares.

Description of the Index

According to the Registration Statement, the Index employs rules for selecting the SPIKES futures contracts

⁷ T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International Securities Exchange, LLC (“MIAX”) via the Options Price Reporting Authority.

⁸ SPDR S&P 500 ETF Trust is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). Shares of the SPDR S&P 500 ETF Trust trade on the Exchange under the symbol “SPY.”

⁹ According to the Registration Statement, the market’s current expectation of the possible rate and magnitude of movements in an index is commonly referred to as the “implied volatility” of the index. For these purposes, “implied volatility” is a measure of the expected volatility of SPY over the next 30 days. The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options.

comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement¹⁰ program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month. The rules applicable to the Index are subject to change by T3 Index.

The level of the Index is published by one or more major market data vendors in real time at least once every 15 seconds and at the close of trading in the Exchange’s Core Trading Session (normally 4:00 p.m., E.T.) on each business day.

The Index is comprised solely of SPIKES futures contracts. SPIKES futures contracts were launched for trading by MGEX, via the CME Globex[®] platform, on December 14, 2020. According to the Registration Statement, SPIKES futures contracts allow investors to invest based on their view of the forward implied market volatility of SPY. Investors that believe the forward implied market volatility of SPY will increase may buy SPIKES futures contracts. Conversely, investors that believe that the forward implied market volatility of SPY will decline may sell SPIKES futures contracts. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

¹⁰ A Trade at Settlement (“TAS”) is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contract month. TAS transactions are permitted in the SPIKES futures contract as outright or spread transactions. TAS transactions are available for trading only during the regular Hours of Trading of 8:30 a.m.–2:58 p.m. Central Time. However, TAS transactions in an expiring SPIKES futures contract are not permitted during the Business Day of its final settlement date. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>. The term “Business Day” means a day when MGEX is open for business, and the term “Hours of Trading” means the hours, on business days, established by MGEX Rules for trading. See MGEX Rules, Chapter 1.

SPIKES Index

According to the Registration Statement, the SPIKES Index is an index designed to measure the implied volatility of SPY over 30 days in the future. The SPIKES Index is calculated based on the prices of certain put and call options on SPY. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. The SPIKES Index is reported by Bloomberg Finance L.P. and Reuters under the ticker symbol “SPIKE.” The SPIKES Index is calculated and disseminated every 100 milliseconds.

Investment Objectives and Strategies

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that correspond to one-and-a-half times (1.5x) the performance of the Index for a single day. The Fund is benchmarked to the Index, which is comprised of SPIKES futures contracts, and will seek to offer exposure to market volatility through publicly traded futures markets.

Under normal market conditions,¹¹ the Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances, the Fund may also invest in futures contracts and swap contracts (“VIX Related Positions”) on the Cboe Volatility Index (“VIX”),¹² an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

In seeking to achieve the Fund’s investment objective, the Sponsor will use a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investments that the Sponsor believes, in combination, should produce daily returns consistent with the Fund’s objective.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly

¹¹ The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹² The VIX Index is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

invest in the SPIKES Index. In addition, under specified circumstances described below, the Fund may invest in VIX Related Positions.

In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, the Sponsor may cause the Fund to invest in VIX Related Positions. According to the Registration Statement, the Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts.¹³ In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.

The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares from time to time in one or more "Creation Units" or "Redemption Units" (together, "Units"). A Unit consists of 25,000 Shares. The size of a Unit is subject to change. The creation and redemption of Units are made in exchange for delivery to the Fund or the distribution by the Fund of the amount of cash represented by the Units being created or redeemed, the amount of which is based on the combined NAV of the number of Shares included in the Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Units is properly received. If permitted by the Sponsor in its sole discretion with respect to the Fund, an "Authorized Participant" may also agree to enter into or arrange for an exchange of a futures contract for related position ("EFCRP") or block trade with the Fund whereby the Authorized Participant would also transfer to the Fund a number and type of exchange-traded futures contracts at or near the closing settlement price for such contracts on the purchase order date. Similarly, the Sponsor in its sole discretion may agree with an Authorized Participant to use

an EFCRP to effect an order to redeem Units.¹⁴ All APs would be able to use an EFCRP to effect orders to create or redeem Units.

Authorized Participants are the only persons that may place orders to create and redeem Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company participants.

Creation Procedures

According to the Registration Statement, on any business day, an Authorized Participant may place an order to create one or more Units.¹⁵ Purchase orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Purchase orders are irrevocable.

The total payment required to create each Creation Unit is the NAV of 25,000 Shares on the purchase order date.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Units mirror the procedures for the creation of Units. On any business day, an Authorized Participant may place an order with the Transfer Agent, and accepted by the Distributor, to redeem one or more Units. Redemption orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Redemption orders are irrevocable.

Upon request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an EFCRP or to a block trade sale of futures contracts to the Authorized Participant.

¹⁴ According to the Registration Statement, an EFCRP is a technique permitted by the rules of certain futures exchanges that, as utilized by the Fund in the Sponsor's discretion, would allow the Fund to take a position in a futures contract from an Authorized Participant, or give futures contracts to an Authorized Participant, in the case of a redemption, rather than to enter the futures exchange markets to obtain such a position.

¹⁵ For purposes of processing purchase and redemption orders for the Fund, a "business day" means any day other than a day when any of NYSE Arca, the New York Stock Exchange, MGEX or other exchange material to the valuation or operation of the Fund, or the calculation of the SPIKES Index, options contracts underlying the SPIKES Index, SPIKES futures contracts or the Index is closed for regular trading.

Determination of Redemption Proceeds

The redemption proceeds from the Fund consist of the cash redemption amount and, if permitted by the Sponsor in its sole discretion with respect to the Fund, an EFCRP or block trade with the Fund as described above. The redemption proceeds from the Fund consist of a cash redemption amount equal to the NAV of the number of Units requested in the Authorized Participant's redemption order on the redemption order date, less transaction fees and any amounts attributable to any applicable EFCRP or block trade.

Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, an updated "Indicative Fund Value" ("IFV") will be calculated. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updating throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the approximate aggregate per Share value of the investments held by the Fund based on the most recently available prices for the Fund's investments. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The IFV will be readily available from the Fund's website, automated quotation systems, published or other public sources, or major market data vendors' website or on-line information services.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. each day. In addition, the Fund's website, www.convexityshares.com, will display the end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website before 9:30 a.m. E.T. each day. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based, (iii) the market value of each investment held by the Fund, (iv) the type (including maturity, ticker symbol,

¹³ Futures on the VIX are traded on the Cboe Futures Exchange.

or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio. The Fund's website will be publicly accessible at no charge.

The Fund's website will include a form of the prospectus that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, trading volume, the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁶ and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

This website disclosure of the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at approximately the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Fund through the Fund's website.

Complete real-time data for SPIKES futures contracts is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters. The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. Information regarding the previous day's closing price and trading

volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹⁷ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares or disclosure of the Fund's daily holdings is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV and the Fund's daily holdings is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200-E. The trading of the Shares will be subject to NYSE Arca Rule 8.200-E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders

acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. With respect to the application of Rule 10A-3¹⁸ under the Act, the Fund will rely on the exception contained in Rule 10A-3(c)(7).¹⁹ The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information

¹⁸ 17 CFR 240.10A-3.

¹⁹ See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

²⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹⁶ The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

¹⁷ See NYSE Arca Rule 7.12-E.

regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").²¹ The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the Index, portfolio holdings and reference assets, (b) limitations on Index or portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Units

and Redemption Units (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's website.

Further, the Exchange states that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inverse leveraged securities (which include the ConvexityShares Daily 1.5x SPIKES Futures ETF) and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009), and 09-65 (November 2009). The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²² that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200-E.²³ The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. E.T. each day. Complete real-time data for SPIKES futures contracts is available by subscription through online information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters.

²¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

²² 15 U.S.C. 78f(b)(5).

²³ The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 (17 CFR 240.10A-3) under the Act, as provided by NYSE Arca Rule 5.3-E.

The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Trust Issued Receipts based on prices related to market volatility that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Trust Issued Receipts based on prices related to market volatility and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–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–NYSEArca–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–NYSEArca–2021–28 and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–11079 Filed 5–25–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91951; File No. SR–ICC–2021–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy

May 20, 2021.

I. Introduction

On April 2, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the Act)¹ and Rule 19b–4 thereunder,² a proposed rule change to make changes to ICC's Risk Parameter Setting and Review Policy (“RPSRP”). The proposed rule change was published for comment in the **Federal Register** on April 14, 2021.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

²⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ ICC Risk Parameter Setting and Review Policy, Exchange Act Release No. 91517 (April 8, 2021), 86 FR 19667 (April 14, 2021) (SR–ICC–2021–009) (“Notice”).

II. Description of the Proposed Rule Change

ICC is proposing to revise its RPSRP, which describes the process of setting and reviewing the risk management model core parameters and the performance of sensitivity analyses related to certain parameter settings. Specifically, the proposed rule change would amend the “Univariate Level Parameters” subsection (Subsection 1.7.1) related to the univariate level parameters associated with the integrated spread response model component.⁴ Namely, ICC proposes to transition the risk management mean absolute deviation (“MAD”) monthly parameter update for index risk factors to an automatic daily update in the risk management system. The proposed changes would also specify that single name risk factor level risk management MADs are not subject to automatic updates and that the ICC Risk Department estimates and reviews the univariate single name integrated spread response parameters and their assumptions at least on a monthly basis.

Further, the proposed rule change would make minor clarifications to the “Implied Distribution Parameters for Index Option Instruments” subsection (Subsection 1.7.4). Specifically, ICC previously replaced naming conventions used in the RPSRP for stress scenarios associated with the Lehman Brothers (“LB”) default with more generic naming conventions associated with extreme price changes, namely extreme price decreases and increases (the “Extreme Price Change Scenarios”). The proposed rule change would make minor updates to replace references and notations to the scenarios associated with the LB default with the Extreme Price Change Scenarios. ICC also proposes to consistently refer to “stress MAD factors” as “stress implied MAD factors” in this section.

Finally, the proposed rule change would amend the “Routinely Updated Parameters” subsection (Subsection 2.4) to be consistent with the changes to Section 1.7.1 noted above specifying that the index risk factor level risk management MADs are automatically updated daily in the risk management system and the other risk factor parameters are reviewed at least monthly.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory

organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁵ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and Rules 17Ad–22(e)(2)(i) and (v),⁷ Rule 17Ad–22(e)(4)(ii),⁸ and 17Ad–22(e)(6)(i)⁹ and thereunder.

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 a clearing agency, like 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, as well as to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.¹⁰ The Commission believes that the proposed changes to the RPSRP, as described above, would timely capture any significant MAD changes and minimize the cumulative effect of MAD changes between parameter updates for index risk factors, and thus reduce the level of initial margin procyclicality. This, in turn, helps to ensure that ICC collects initial margin sufficient to cover its credit exposures to its clearing participants, thereby supporting its ability to continue operating as a central counterparty with the financial resources necessary for ICC to promptly and accurately clear and settle CDS transactions and safeguard securities and funds.

Further, the Commission believes that the changes to the Implied Distribution Parameters for Index Option Instruments in the RPSRP to replace references and notations to the scenarios associated with the LB default with the Extreme Price Change Scenarios strengthens the RPSRP documentation so that all sections are consistent with the previous change that incorporated Extreme Price Change Scenarios into the ICC risk management procedures, including the RPSRP.¹¹ The Commission believes by ensuring generically named stress scenarios that relate to extreme market events, as opposed to the LB default, are incorporated into the RPSRP, ICC can be

more flexible and capable of considering a range of events beyond the LB Default, which, in turn, enhances its ability to collect the appropriate amount of initial margin to cover its credit exposures to its clearing participants, thereby supporting its ability to continue operating as a central counterparty with the financial resources necessary to promptly and accurately clear and settle CDS transactions and safeguard securities and funds.

Finally, the Commission believes that the proposed amendments to update the “Routinely Updated Parameters” subsection of the RPSRP to specify that the index risk factor level risk management MADs are automatically updated daily in the risk management system and the other risk factor parameters are reviewed at least monthly enhances clarity with respect to ICC’s process of setting and reviewing the model core parameters to ensure that the documentation remains up-to-date and clear to support the effectiveness of ICC’s risk management system. The Commission believes that an effective risk management system supports ICC’s ability to maintain adequate financial resources, thereby promoting both the prompt and accurate clearance and settlement of CDS transactions and the ability to safeguard securities and funds.

For these reasons, the Commission believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.¹²

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rule 17Ad–22(e)(2)(i) and (v) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to provide, as applicable, for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.¹³ The Commission believes that by proposing to amend the risk management MAD monthly parameter update for index risk factors to an automatic daily update in the risk management system, specifying that single name risk factor level risk management MADs are not subject to automatic updates and that the ICC Risk Department estimates and reviews the univariate single name integrated spread response parameters and their assumptions at least on a monthly basis, the proposed rule change promotes clear and transparent governance arrangements and direct lines of

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q–1(b)(3)(F).

⁷ 17 CFR 240.17Ad–22(e)(2)(i) and (v).

⁸ 17 CFR 240.17Ad–22(e)(4)(ii).

⁹ 17 CFR 240.17Ad–22(e)(6)(i).

¹⁰ 15 U.S.C. 78q–1(b)(3)(F).

¹¹ See, SR–ICC–2020–009.

¹² 15 U.S.C. 78q–1(b)(3)(F).

¹³ 17 CFR 240.17Ad–22(e)(2)(i) and (v).

⁴ The description of the proposed rule change is excerpted from the Notice.

responsibility. For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i) and (v).¹⁴

C. Consistency With Rule 17Ad-22(e)(4)(ii)

Rule 17Ad-22(e)(4)(ii) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions.¹⁵

The Commission believes that by transitioning the risk management MAD monthly parameter update for index risk factors to an automatic daily update, the proposed rule change would enhance ICC's ability to manage risks and maintain sufficient financial resources by collecting the margin designed to cover its credit exposures, thereby strengthening its ability to maintain its financial resources and thus withstand the potential pressure of the default of a clearing participant.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(4)(ii).

D. Consistency With Rule 17Ad-22(e)(6)(i)

Rule 17Ad-22(e)(6)(i) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.¹⁶ As noted above, the proposed rule change would revise the RPSRP such that the index risk factor level risk management MADs are automatically updated daily in the risk management system in order to timely capture any significant MAD changes and minimize the cumulative

effect of MAD changes between two parameter updates and thus reduce the level of IM procyclicality. The Commission believes that because index RFs could exhibit dynamic market response to rapidly changing macro-economic conditions, the proposed change should help to produce margin levels commensurate with the risks and particular attributes of portfolios in which positions in index RFs dominate portfolio compositions. The Commission also believes that the more frequent update should enhance and strengthen ICC's process for reviewing and setting the model core parameters, which, in turn, serves to promote the soundness of ICC's risk management model and system and thus to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i).¹⁷

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 Act¹⁸ and Rules 17Ad-22(e)(2)(i) and (v),¹⁹ Rule 17Ad-22(e)(4)(ii),²⁰ and 17Ad-22(e)(6)(i)²¹ and thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act²² that the proposed rule change (SR-ICC-2021-009), be, and hereby is, approved.²³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11083 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91862; File No. SR-NYSECHX-2021-10]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue Offering Certain Connectivity Services That Have Been Suspended by the Securities and Exchange Commission

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 7, 2021, NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to continue offering certain connectivity services that have been suspended by the Securities and Exchange Commission ("Commission") at no charge, for a period of 14 days, in order to provide affected Users time to acquire substitute services before their connectivity is terminated. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁷ 17 CFR 240.17Ad-22(e)(6)(i).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

²⁰ 17 CFR 240.17Ad-22(e)(4)(ii).

²¹ 17 CFR 240.17Ad-22(e)(6)(i).

²² 15 U.S.C. 78s(b)(2).

²³ 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).

²⁴ 17 CFR 200.30-3(a)(12).

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹⁵ 17 CFR 240.17Ad-22(e)(4)(ii).

¹⁶ 17 CFR 240.17Ad-22(e)(6)(i).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue offering certain connectivity services that have been suspended by the Commission at no charge, for a period of 14 days, in order to provide affected Users³ time to acquire substitute services before their connectivity is terminated.

As background, on March 10, 2021, the Exchange filed with the Commission a proposed rule change for immediate effectiveness (the "Filing") that amended the colocation services offered by the Exchange to provide Users the option to access to the systems and data feeds of various additional third parties.⁴ The proposed rule change became operative on April 9, 2021. Since then, five Users have contracted to receive the services that were added in the Filing.

On May 7, 2021, the Commission suspended the Filing and instituted proceedings to determine whether the proposed rule change should be approved or disapproved.⁵ Such action suspended the Exchange's ability to offer access to Third Party Systems from Long Term Stock Exchange, Members Exchange, MIAX Emerald, MIAX PEARL Equities, Morgan Stanley, and TD Ameritrade, and to offer connectivity to Third Party Data Feeds from ICE Data Services—ICE TMC, Members Exchange, MIAX Emerald, and MIAX PEARL Equities (together, the "Suspended Services").

The Commission's suspension of such services is likely to cause disruption to the current Users of such services, who must now acquire substitutes for the

³ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12). As specified in the NYSE Chicago Fee Schedule ("Fee Schedule"), a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates New York Stock Exchange LLC ("NYSE"), NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). See *id.* at 58779. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-31, SR-NYSEAMER-2021-26, SR-NYSEARCA-2021-38, and SR-NYSEAT-2021-13.

⁴ See Securities Exchange Act Release No. 91390 (March 23, 2021), 86 FR 16424 (March 29, 2021) (SR-NYSECHX-2021-04).

⁵ See Securities Exchange Act Release No. 91790 (May 7, 2021) (SR-NYSE-2021-15, SR-NYSEAMER-2021-13, SR-NYSEARCA-2021-15, SR-NYSECHX-2021-04, SR-NYSEAT-2021-05).

Suspended Services. As an accommodation to such current Users, the Exchange now proposes to provide the Suspended Services to all Users, at no charge, for a period of 14 days from the date of filing ("Transition Period"), to enable current Users to maintain their connectivity while establishing alternate connectivity.

Specifically, the Exchange proposes to amend its Fee Schedule relating to colocation to provide:

Connectivity to Suspended Third Party Systems and Suspended Third Party Data Feeds

Connectivity to the Third Party Systems and Third Party Data Feeds listed below ("Suspended Services") is available until May 24, 2021 ("Transition Period"). During the Transition Period, the Exchange will not charge any fees for the Suspended Services. At the conclusion of the Transition Period, any remaining customers of Suspended Services will have their Suspended Services terminated.

Suspended Third Party Systems

Long Term Stock Exchange (LTSE)
Members Exchange (MEMX)
MIAX Emerald
MIAX PEARL Equities
Morgan Stanley
TD Ameritrade

Suspended Third Party Data Feeds

ICE Data Services—ICE TMC
Members Exchange (MEMX)
MIAX Emerald
MIAX PEARL Equities

Application and Impact of the Proposed Changes

The proposed rule change would apply to all Users, each of which would be eligible to receive the Suspended Services, at no charge, for a period of up to 14 days.

Competitive Environment

The proposed changes are not intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, because it is designed to prevent fraudulent and

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and would further the protection of investors and the public interest. Without the proposed rule change, the Suspended Services would be terminated immediately, leaving the current Users without access and connectivity to the Suspended Services. As a result, the Commission's suspension of the services at issue is likely to cause disruption to the current Users of the Suspended Services, who must now acquire substitute services. The Exchange's proposal to provide the Suspended Services, at no charge, to all Users during the Transition Period would give such current Users an opportunity to transition to substitute services without a gap in their service, which would mitigate the disruption and lessen the burden on such current Users.

Further, the Exchange believes that providing a 14-day Transition Period would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest. Current Users that wish to replace the Suspended Services will have to investigate their other options, negotiate new terms, and establish and test their new connections. The proposed Transition Period gives current Users time to complete all the steps required to make the transition without having a gap in their connectivity to the Suspended Services.

The Exchange believes that its proposed rule change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would highlight that the Suspended Services are only available during the Transition Period, that no fee will be charged for the Suspended Services during the Transition Period. At the end of the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Transition Period, all Users will have their Suspended Services terminated. It would thereby reduce any potential ambiguity and provide current Users and other market participants with clarity concerning the terms and period of availability of the Suspended Services.

In addition, the Exchange believes that the proposed rule change would promote just and equitable principles of trade. In light of the Commission's suspension, the current Users of the affected services are faced with an unexpected, immediate disruption of their connectivity, while market participants that opted to obtain similar connectivity from alternate providers are not. The Exchange's proposal to allow all Users to receive the Suspended Services at no charge during the Transition Period would help equalize the treatment of these two groups of market participants by providing the same 14 day prospective period to both groups and giving current Users time to make the transition without having a gap in their connectivity to the third party systems and data feeds at issue.

Finally, the proposed rule change is not designed to permit unfair discrimination between market participants. The proposed rule change would apply equally to all Users. All Users would be entitled to receive the Suspended Services at no charge during the Transition Period. At the conclusion of the Transition Period, any remaining customers of Suspended Services would have their Suspended Services terminated.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁸ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to give current Users time to make a fair and orderly transition to substitute services without the disruptions to their operations and, potentially, to the markets that would be caused by an immediate termination of the Suspended Services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the 14 day period to take effect immediately. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2021-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2021-10. 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

⁸ 15 U.S.C. 78f(b)(8).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

Number SR–NYSECHX–2021–10, and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–10384 Filed 5–25–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; West Michigan Regional Airport, Holland, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 18.8 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at the West Michigan Regional Airport, Holland, Michigan. The aforementioned land is not needed for aeronautical use. The property is located near the southeast corner of 64th Street and CSX Transportation Railroad. It is currently vacant, undeveloped land with no future aeronautical use identified. The property is proposed to be sold for a future non-aeronautical airport compatible land use.

DATES: Comments must be received on or before June 25, 2021.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Marlon Peña, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone: (734) 229–2909/Fax: (734) 229–2950 and West Michigan Airport Authority (WMAA), 60 Geurink Boulevard, Holland, Michigan 49423, (616) 392–7831.

Written comments on the Sponsor's request must be mailed to: Marlon Peña, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2909/Fax Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Marlon Peña, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number:

(734) 229–2909/Fax Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is vacant undeveloped land with no current or future aeronautical use. This property is part of a larger area containing 63.4 acres of land that was acquired under federal Airport Improvement Program Grant #3–26–0045–0487. The Airport Sponsor is proposing to sell 18.8 acres of this land at fair market value. It is anticipated that the land would be used for airport compatible development of light industrial use or office space with associated parking lot.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the West Michigan Regional Airport, Holland, Michigan from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

Parcel K: Part of the Southwest ¼ of Section 9, Town 4 North, Range 15 West, City of Holland, Allegan County, Michigan, described as: Commencing at the Southwest corner of said Section; thence S89°48'46" E 1412.19 feet along the South line of said Section to the Point of Beginning; thence N05°56'42" W 1009.47 feet along the East line of the CSX Railroad right-of-way; thence N80°53'23" E 760.52 feet; thence N89°25'13" E 571.84 feet; thence S00°43'17" E 276.36 feet along the North-South ¼ line of said Section; thence N89°48'46" W 660.00 feet; thence S00°43'17" E 758.99 feet; thence N89°48'46" W 165.10 feet; thence S00°43'17" E 99.01 feet; thence N89°48'46" W 407.37 feet along said South line to the Point of Beginning. Contains 18.80 acres. Subject to highway right-of-way for 64th Street over the Southerly most 33.00 feet

thereof. Subject to easements, restrictions and rights-of-way of record.

Issued in Romulus, Michigan, on May 21, 2021.

Stephanie Swann,
Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2021–11129 Filed 5–25–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0013]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce. **DATES:** The exemptions were applicable on May 14, 2021. The exemptions expire on May 14, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA–2021–0013, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through

¹⁵ 17 CFR 200.30–3(a)(12).

Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

On April 6, 2021, FMCSA published a notice announcing receipt of applications from 17 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (86 FR 17880). The public comment period ended on May 6, 2021, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received two comments in this proceeding. Of the two comments received, one was in support of Jeffrey Haley's hearing exemption application and the other was in support of Elizabeth Keyes' hearing exemption application.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each

driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Timothy Allen (LA)
David Blough (IN)
Adrian Crutchfield (MO)
Frederick Fleetwood (NC)
Hunter Flower (MI)
Christopher Gilmore (TX)
Jeffrey Haley (MN)
Jorge Hernandez (TX)
Kelvin Jarman (IL)
Elizabeth Keyes (MN)
Ted McCracken (OR)
Mitchel Moers (FL)
Christopher Ramaza-Cruz (CT)
Nico Ruiz (CA)
Thomas Sitzman (OH)
Susana Valenzuela (CA)
Michael Woodberry (NJ)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2021–11111 Filed 5–25–21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2021–0024]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from three individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 25, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2021–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number, FMCSA–2021–0024, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, fmcsamedical@dot.gov, FMCSA,

Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation***A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2021–0024), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/docket?D=FMCSA-2021-0024. Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA–2021–0024, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through

Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The three individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication,

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.*, drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, "Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders," (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders

prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Angela Camarco

Ms. Camarco is a 62-year old class D license holder in Connecticut. She has a history of focal seizures and has been seizure free since May 2004. She takes anti-seizure medication with the dosage and frequency remaining the same since 1995. Her physician states she is supportive of Ms. Camarco receiving an exemption.

Wesley Campbell

Mr. Campbell is a 28-year old class C license holder in California. He has a history of epilepsy and has been seizure free since October 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 2017. His physician states he is supportive of Mr. Campbell receiving an exemption.

Thomas Frederick

Mr. Frederick is a 26-year old class A license holder in Pennsylvania. He had a single unprovoked seizure in May 2015. He takes anti-seizure medication with the dosage and frequency remaining the same since May 2015. His physician states he is supportive of Mr. Frederick receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-11112 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0121; FMCSA-2014-0103; FMCSA-2014-0105; FMCSA-2014-0106; FMCSA-2014-0107; FMCSA-2014-0385; FMCSA-2015-0327; FMCSA-2015-0329; FMCSA-2016-0002; FMCSA-2018-0137]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 15 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 21, 2021. The exemptions expire on April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2013-0121, FMCSA-2014-0103, FMCSA-2014-0105, FMCSA-2014-0106, FMCSA-2014-0107, FMCSA-2014-0385, FMCSA-2015-0327, FMCSA-2015-0329, FMCSA-2016-0002, or FMCSA-2018-0137 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m.,

ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

On April 6, 2021, FMCSA published a notice announcing its decision to renew exemptions for 15 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (86 FR 17882). The public comment period ended on May 6, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 15 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of April 21, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (86 FR 17882):

Maurice N. Abenchuchan (FL)
Ron Adkins (MO)
Prince K. Bempong (TX)
Keith Byrd (TN)
Perry Cobb (TN)
Kevin Dent (MS)
Nathaniel Godfrey (KY)
Daniel Grossinger (MD)
Dwayne Johnson (IL)
Paul Langlois (OH)
Reynaldo Martinez (TX)
Floyd McClain (OH)
Brian Peek (GA)
Lon E. Smith (MS)
John Turner, III (CO)

The drivers were included in docket number FMCSA-2013-0121, FMCSA-2014-0103, FMCSA-2014-0105, FMCSA-2014-0106, FMCSA-2014-0107, FMCSA-2014-0385, FMCSA-2015-0327, FMCSA-2015-0329, FMCSA-2016-0002, or FMCSA-2018-0137. Their exemptions were applicable as of April 21, 2021, and will expire on April 21, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-11110 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2021-0022]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 31, 2021, the Belt Railway Company of Chicago (BRC) petitioned the Federal Railroad Administration (FRA) seeking approval

to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA-2021-0022.

Specifically, BRC requests permission to make permanent modifications to multiple locations on its 59th Street Line between milepost (MP) 3.10F, Narragansett, and MP 0.0F, 55th Street. The modifications will include the removal of an interlocking plant, modification of an interlocking's configuration, and installation of new intermediate signals located on BRC's Kenton Line at MP 6.7. BRC states that the removal of these signals will eliminate superfluous signals with a commensurate reduction in the cost of maintenance.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590.

Communications received by July 12, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [https://](https://www.regulations.gov)

www.transportation.gov/privacy. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](https://www.regulations.gov).

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021-11123 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers FRA-2010-0028, -0029, -0039, -0042, -0043, -0045, -0048, -0051, -0054, -0056, -0057, -0058, -0059, -0060, -0061, -0062, -0064, -0065, and -0070]

Railroads' Requests To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, during March, April, and early May of 2021, nineteen host railroads submitted requests for amendments (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP). As these RFAs may involve requests for FRA's approval of proposed material modifications to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on railroads' RFAs to their PTCSPs.

DATES: FRA will consider comments received by June 7, 2021. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES: *Comments:* Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed RFAs to their PTCSPs are cited above and in the **SUPPLEMENTARY INFORMATION** section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports>. All comments received will be posted without change

to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Deputy Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that host railroads' March 2021 and April 2021 RFAs to their PTCSPs are available in their respective public PTC dockets, and this notice provides an opportunity for public comment on these RFAs.

On March 3, 2021, CSX Transportation, Inc. (CSX) submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I-ETMS), and that RFA is available in Docket No. FRA-2010-0028. On March 12, 2021, Union Pacific Railroad (UP) submitted an RFA to its I-ETMS PTCSP, and that RFA is available in Docket No. FRA-2010-0061. On March 14, 2021, and April 20, 2021, respectively, the National Railroad Passenger Corporation (Amtrak) submitted an RFA to its I-ETMS PTCSP and an RFA to FRA's Type Approval and PTC System Certification of Amtrak's Incremental Train Control System, and those RFAs are available in Docket No. FRA-2010-0029. On March 16, 2021, Kansas City Southern Railway (KCS) submitted an RFA to its I-ETMS PTCSP, and that RFA is available in Docket No. FRA-2010-0059. On March 22, 2021, Norfolk Southern Railway (NS) submitted an RFA to its I-ETMS PTCSP, and that RFA is available in Docket No. FRA-2010-0060.

In addition, on April 23, 2021, the following 19 host railroads jointly submitted an RFA to their I-ETMS PTCSPs: Alaska Railroad Corporation, Amtrak, The Belt Railway Company of Chicago, BNSF Railway, Caltrain, Canadian National Railway, Canadian

Pacific Railway (CP), Consolidated Rail Corporation, CSX, Kansas City Terminal Railway, KCS, New Mexico Rail Runner Express, Northeast Illinois Regional Commuter Railroad Corporation (Metra), Northern Indiana Commuter Transportation District, NS, South Florida Regional Transportation Authority, Southern California Regional Rail Authority (Metrolink), Terminal Railroad Association of St. Louis, and UP. Their joint RFA is available in Docket Numbers FRA-2010-0028, -0029, -0039, -0042, -0043, -0045, -0048, -0051, -0054, -0056, -0057, -0058, -0059, -0060, -0061, -0062, -0064, -0065, and -0070. Finally, on May 5, 2021, CP submitted an RFA to its I-ETMS PTCSP, and that RFA is available in Docket No. FRA-2010-0058.

Interested parties are invited to comment on any RFAs to railroads' PTCSPs by submitting written comments or data. During FRA's review of railroads' RFAs, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. See 49 CFR 236.1021; see also 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny railroads' RFAs to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](https://www.regulations.gov). To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2021-11125 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2021–0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Automated Driving Systems 2.0 A Vision for Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of an extension of a currently-approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This is a request for an extension of a currently-approved information collection. This document describes the collection of information for which NHTSA seeks OMB extension approval, titled “Automated Driving Systems 2.0: A Vision for Safety” and identified by OMB Control Number 2127–0723, which is currently approved through May 31, 2021. The burden hour calculations have been adjusted to reflect a reduction in burden as well as a reduction in the frequency of response resulting in a total annual burden hour reduction from 86,100 hours to 12,000 hours. A **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection was published on March 9, 2021. NHTSA received three comments to this notice, two of which were generally supportive of the information collection. The third comment addressed accessibility of ADS-equipped vehicles. None of the comments addressed burden hours or cost estimates.

DATES: Comments must be submitted on or before June 25, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at www.reginfo.gov/public/do/PRAMain. To find this particular information collection, select “Currently under 30-day Review—Open for Public Comment” or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Debbie Sweet, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone (202) 366–7179; Fax: (202) 366–2106; email address: Debbie.Sweet@dot.gov. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces the following information collection request will be submitted to OMB.

Title: Automated Driving Systems 2.0: A Vision for Safety.

OMB Control Number: 2127–0723.

Form Number: None.

Type of Request: Extension of a currently-approved information collection.

Length of Approval Requested: Three years.

Summary of the Collection of Information: In September 2017, NHTSA published a policy document titled *Automated Driving Systems 2.0: A Vision for Safety (ADS 2.0)*. Recognizing the potential that Automated Driving Systems (ADSs) have to enhance safety and mobility, this policy document set out an approach to enable the safe deployment of Automated Driving Systems (SAE Automation Levels 3 through 5—Conditional, High, and Full Automation Systems as defined in SAE J3016).¹

Consistent with its statutory purpose to reduce traffic crashes and deaths and injuries resulting from traffic crashes,² NHTSA has recommended disclosure of information via a Voluntary Safety Self-Assessment (VSSA) related to ADS technologies by vehicle manufacturers and other entities as described in *ADS 2.0*. In the section of *ADS 2.0* titled, “Voluntary Guidance for Automated Driving systems” (hereafter referred to as “Voluntary Guidance”), NHTSA recommended that manufacturers and other entities assess their ADS-equipped vehicle against specific safety elements, summarize that assessment, and then voluntarily disclose that summary to the

public.³ The Voluntary Guidance outlines recommended best practices, many of which should be commonplace in the industry, for the safe pre-deployment design, development, and testing of ADSs prior to commercial sale or operation on public roads.

Description of the Need for the Information and Proposed Use of the Information: To assist States and the public in understanding how safety is being considered by manufacturers and other entities developing and testing ADSs, NHTSA has encouraged disclosures that aid in that mission. The burden estimates contained in this notice are based on the Agency’s understanding of the ADS market and the time associated with generating a self-assessment and voluntarily making a summary of that self-assessment public. The estimates in this notice are adjustments from the previous information collection request (ICR) demonstrating a decrease in the burden-hour estimate.

The manner by which NHTSA encourages ADS manufacturers and other entities to disclose information is through a VSSA. The VSSA summarizes how the manufacturer or other entity has considered the safety elements contained in the Voluntary Guidance as shown below:

- System Safety
- Operational Design Domain
- Object and Event Detection and Response
- Fallback (Minimal Risk Condition)
- Validation Methods
- Human Machine Interface
- Vehicle Cybersecurity
- Crashworthiness
- Post-Crash ADS Behavior
- Data Recording
- Consumer Education and Training
- Federal, State and Local Laws

The Agency believes the work associated with consideration of the safety element in the Voluntary Guidance to be an extension of good and safe engineering practices already in place. It therefore believes that manufacturers and other entities will have access to all the information needed to craft a VSSA that discusses how the safety elements were considered and, if they choose, release a summary of that assessment publicly. Of the manufacturers and other entities who voluntarily disclose this information, NHTSA anticipates that most manufacturers and other entities will post the VSSAs online. As of December 28, 2020, NHTSA was aware of 26 VSSAs, all available online.

¹ For more information about SAE J3016, see https://www.sae.org/standards/content/j3016_201806

² 49 U.S.C. 30101.

³ https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf.

The safety elements are fully described in the Voluntary Guidance section (section 1) of *ADS 2.0*, as is the VSSA. The VSSA (including the public release of that summary assessment) is intended to communicate to the public (particularly States and consumers) that entities are (1) considering the safety aspects of ADSs; (2) communicating and collaborating with DOT; (3) encouraging the self-establishment of industry safety norms for ADSs; and (4) building public trust, acceptance, and confidence through transparent testing and deployment of ADSs.

60-Day Notice: A Federal Register Notice with a 60-day comment period soliciting comments on the information collection was published on March 9, 2021 (86 FR 13602). The Agency received three comments on this notice. Two comments, one from Locomotion and one from the California Department of Motor Vehicles (DMV) were generally supportive of the information collection. Locomotion stated that it “applauds NHTSA work to provide voluntary data sharing platforms to improve the public’s understanding” and believes the information collection should be extended for these activities. The California Department of Motor Vehicles (DMV) and California Highway Patrol (CHP) stated it was “pleased to submit these comments expressing [their] support for extending the VSSA as a method to collect information from Automated Driving System (ADS) developers about their development of the technology.” The third comment, from an individual, addressed accessibility in ADS-equipped vehicles, but did not provide any specific comments about this information collection. None of the comments addressed burden hours or cost estimates.

Affected Public: Entities involved in the testing and deployment of ADSs.

Estimated Number of Respondents: 20.

NHTSA estimates that there will be, on average, 20 respondents a year.

Frequency: On Occasion (based on information from the current information collection, respondents are

expected to respond, on average, once every three years).

Number of Responses: 20.

Estimated Total Annual Burden Hours: 12,000 hours.

NHTSA is using the number of entities that have received permits from the State of California as surrogate for the number of respondents that may choose to develop and issue a VSSA. As of December 28, 2020, California has cumulatively issued permits to 58 entities to test Automated Driving Systems with drivers present, five of those entities also received permits to test without a driver present, and one entity (included on both other lists) has a permit to deploy.⁴ At the onset of the current information collection, California had issued permits to 45 entities as of November 16, 2017, but NHTSA had expected the number to grow to 60 entities within the three years of the information collection, assuming an addition of new entrants. For that reason, the burden hours and cost were calculated based on 60 respondents. NHTSA expects the number of potential respondents to remain at approximately 60 given the coordinated efforts of some companies on the list, the departure of some of those entities from the industry (departures were not prevalent in 2017 as the industry was new), and accounting for new entrants. As a point of reference, since the previous ICR was approved, NHTSA is aware of 26 published VSSAs. Given that only 26 VSSAs have been published in three years compared to the 58 actively-permitted entities in California, NHTSA believes that 60 respondents is an appropriate high-end estimate for total respondents. However, based on observations of the current information, NHTSA estimates that respondents will only produce and disclose a new VSSA once every three years. Therefore, NHTSA has revised its burden calculations to reflect estimates based on 20 respondents each year.

Components of the Voluntary Guidance in *ADS 2.0* and public disclosure of the VSSA have not changed since release in 2017. NHTSA

expects the industry burden of addressing safety elements in the Voluntary Guidance to be comprised of efforts entities would already incur in normal business operation and existing documentation. While the previous ICR calculated burden hours associated with a potential increase in analysis and review in order to develop the VSSA, NHTSA has since determined there to be no increased documentation citing how an entity addressed the safety elements in the Voluntary Guidance. NHTSA does not believe that any entity is documenting its safety efforts solely for the purpose of the VSSA and public disclosure. Therefore, NHTSA reduced the estimation of burden hours by 835 burden hours per respondent per year from the previous ICR.

Development and disclosure of a VSSA is expected to involve burden for format, content, and summary, varying by safety element. NHTSA estimates that each entity will spend approximately 600 hours to develop and disseminate a VSSA. This estimate of burden is comprised of efforts to transmit information from the existing format (520 hours for development) into a summary format that would be consumable by the public, including data translation, analysis, and discussion of traditionally technical information (80 hours to summarize).

The total estimated burden hours for a single VSSA is calculated as 600 hours for each of the 20 respondents. The total burden hours per year is estimated at 12,000 hours, a reduction from the 86,100 hours in the previous ICR.

In summary, NHTSA estimates the total burden associated with disclosure recommendations via a VSSA would be 600 hours per respondent with 20 respondents submitting information each year. The frequency of responding is once every three years; therefore, NHTSA estimates there will be a total of 60 unique responders over the course of the next three years.

The burden hours associated with development of a VSSA are detailed in the tables below.

TABLE 1—BURDEN HOURS ESTIMATES FOR VSSA, PER SAFETY ELEMENT

Safety element in voluntary guidance	Burden hours for VSSA development	Burden hours for VSSA summary
A. System Safety	20	10
B. Operational Design Domain	20	5
C. Object and Event Detection and Response	40	5

⁴ <https://www.dmv.ca.gov/portal/vehicle-industry-services/autonomous-vehicles/autonomous-vehicle-testing-permit-holders/>.

TABLE 1—BURDEN HOURS ESTIMATES FOR VSSA, PER SAFETY ELEMENT—Continued

Safety element in voluntary guidance	Burden hours for VSSA development	Burden hours for VSSA summary
D. Fallback	80	10
E. Validation Methods	80	10
F. Human Machine Interface	20	5
G. Vehicle Cybersecurity	20	5
H. Crashworthiness	20	5
I. Post-Crash ADS Behavior	20	5
J. Data Recording	80	10
K. Consumer Education and Training	40	5
L. Federal, State, and Local Laws	80	5
Total Burden Hours per ADS	520	80

TABLE 2—CALCULATION OF ANNUAL BURDEN HOURS

Estimated Number of Respondents Annually	20.
Estimated Burden Hours for Voluntary Assessment Development	520 hours.
Estimated Burden Hours for Summarizing Information	80 hours.
Total Burden Hours per Respondent	600 hours.
Total Estimated Burden Hours for Industry per Year	12,000 hours.

NHTSA estimates the hourly cost associated with preparing VSSAs to be \$97.36⁵ per hour using the Bureau of Labor Statistics' mean hourly wage estimate for architectural and engineering managers in the motor vehicle manufacturing industry (Standard Occupational Classification #11-9041). Therefore, the total estimated annual burden to each respondent is \$58,416 (600 hours × \$97.36 = \$58,416). Therefore, the total estimated labor costs to all respondents to this collection is \$1,168,320.

Estimated Total Annual Burden Cost: NHTSA does not anticipate any further burden to respondents beyond the labor costs associated with the burden hours.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c)

ways for the department to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Cem Hatipoglu,
Associate Administrator for Vehicle Safety Research.

[FR Doc. 2021-11150 Filed 5-25-21; 8:45 am]

BILLING CODE 4910-59-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 17, 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. AL-FAY, Ibrahim Ali 'Awad (a.k.a. "Abu Ali al-Samarra'i"), Sakarya, Turkey; DOB 1968; Gender Male (individual) [SDGT]. Designated pursuant to section 1(a)(iii)(B) of Executive Order 13224 of September 23,

⁵ The hourly wage is estimated to be \$68.35 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2019, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed June 30, 2020. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$97.36.

2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism", 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 owning or controlling, directly or indirectly, AL FAY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AL-FAY, Idris 'Ali 'Awad (a.k.a. AL-FAY, Idris Ali Awad Khalif; a.k.a. KHALIF, Idris Ali 'Awad; a.k.a. "Abu Sayf al-Samara'i"; a.k.a. "Mullah Idris"), Owainat Village, Owainat District, Salah Ad Din Province, Iraq; Turkey; Abu Dur, Tikrit, Salah-ad Din Province, Iraq; DOB 01 Jul 1971; POB Abu Dur, Tikrit, Salah-ad Din Province, Iraq; nationality Iraq; Gender Male (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. KHANFURAH, Alaa (a.k.a. KHANFORA, Alaa; a.k.a. KHANFORAH, Mohammed Alaa Omer; a.k.a. KHANFOURA, Alaa; a.k.a. KHANFURAH, 'Ala'; a.k.a. KHANFURAN, Alaa), Reyhanli, Hatay, Turkey; DOB 01 Jan 1986; alt. DOB 1985; POB al-Habit, Syria; nationality Syria; Gender Male (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entity

1. AL FAY COMPANY, Building 54100, Adapazari, Sakarya Province, Turkey; Organization Type: Other monetary intermediation [SDGT].

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: May 17, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-11097 Filed 5-25-21; 8:45 am]

BILLING CODE 4810-AL-P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China." Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC, on June 10, 2021 on "China's Nuclear Forces."

DATES: The hearing is scheduled for Thursday, June 10, 2021, 9:30 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at www.uscc.gov. Also, please check the Commission's website for possible changes to the hearing schedule.

Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202-624-1496, or via email at jcunningham@uscc.gov. *Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to

request an accommodation, please contact Jameson Cunningham via email at jcunningham@uscc.gov. Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the sixth public hearing the Commission will hold during its 2021 report cycle. This hearing will examine the modernization, expansion, and adaptation of China's nuclear capabilities over time. The first panel will examine China's nuclear weapons stockpile and delivery systems; the nuclear forces' command, control, and communications; and Beijing's use of military-civil fusion to support the nuclear forces. The second panel will explore why China seeks to modernize its nuclear forces, historical changes in Chinese nuclear doctrine, and the possibility of escalation to nuclear use in selected regional contingencies. The final panel will assess the implications of China's growing nuclear capabilities for the United States, the region, and the global nonproliferation regime.

The hearing will be co-chaired by Commissioner Jeffrey Fiedler and Commissioner Alex Wong. Any interested party may file a written statement by June 10, 2021 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005), as amended by Public Law 113-291 (December 19, 2014).

Dated: May 21, 2021.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2021-11181 Filed 5-25-21; 8:45 am]*COM007**COM007*

BILLING CODE 1137-00-P



FEDERAL REGISTER

Vol. 86

Wednesday,

No. 100

May 26, 2021

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 11

Changes to Representation of Others Before the United States Patent and Trademark Office; Final Rule

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 1 and 11**

[Docket No.: PTO-C-2013-0042]

RIN 0651-AC91

Changes to Representation of Others Before the United States Patent and Trademark Office**AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) amends the Rules of Practice in Patent Cases and the rules regarding Representation of Others before the United States Patent and Trademark Office. This rulemaking aligns the USPTO Rules of Professional Conduct more closely with the American Bar Association (ABA) Model Rules of Professional Conduct. It also improves clarity in existing regulations to facilitate the public's compliance, including revising various deadlines, the procedures concerning the registration exam, provisions related to the revocation of an individual's registration or limited recognition in limited circumstances, and provisions for reinstatement. It makes non-substantive changes to improve the readability of various provisions as well.

DATES: This rule is effective June 25, 2021.

FOR FURTHER INFORMATION CONTACT: William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, at 571-272-4097.

SUPPLEMENTARY INFORMATION:**Purpose**

35 U.S.C. 2(b)(2)(D) provides the USPTO with the authority to "establish regulations, not inconsistent with law, which . . . may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office." 37 CFR part 11 contains those regulations that govern the representation of others before the USPTO, including regulations relating to the recognition to practice before the USPTO, investigations and disciplinary proceedings, and the USPTO Rules of Professional Conduct. 37 CFR part 1 addresses the rules of practice in patent cases, and most relevantly fees in patent matters. This notice sets forth amendments to parts 1 and 11 as discussed herein.

Discussion of Rule Changes

On April 3, 2013, the Office published a final rule that established the USPTO Rules of Professional Conduct, 37 CFR 11.101 *et seq.* The USPTO Rules of Professional Conduct are modeled after the ABA Model Rules of Professional Conduct. The USPTO Rules of Professional Conduct have not been substantively updated since 2013.

Harmonization With the ABA Model Rules of Professional Conduct

With this rule, the USPTO is amending the USPTO Rules of Professional Conduct to align them with widely adopted revisions to the ABA Model Rules of Professional Conduct. 37 CFR 11.106(b) is amended to allow a practitioner to reveal information relating to the representation of a client in certain circumstances for the purpose of detecting and resolving conflicts of interest arising from the practitioner's change of employment or changes in the composition or ownership of a law firm. Section 11.106(d) is amended to require a practitioner to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Section 11.118 is amended to clarify that a practitioner may not use information learned from a prospective client except as otherwise provided, regardless of whether the information was learned in a discussion. Section 11.702 is amended to allow practitioners to post contact information such as a website or email address instead of an office address on marketing materials. Finally, § 11.703 is amended to clarify that the limitations on solicitation apply to any person, without regard to whether the practitioner considers the targets of the solicitation to actually be prospective clients.

Simplification and Clarification of Rules and Processes

The USPTO is also amending its regulations to facilitate compliance by the public. As discussed in greater detail in the section titled "Discussion of Specific Changes in This Rule," the amendments to §§ 11.7, 11.9, 11.11, 11.19, 11.51, 11.52, 11.53, 11.54, 11.55, 11.58, and 11.60 are designed to enhance the clarity of these sections. Also, the reinstatement provisions in §§ 11.9(f) and 11.11(f) have been realigned for registered practitioners and practitioners granted limited recognition under § 11.9(b). The periods of time in these sections are either the same as or greater than the applicable

periods previously provided under this part. As such, the new time periods apply without regard to whether the relevant period had started to run before or after the effective date of this rule.

In addition, the regulations have been amended to add provisions addressing the revocation of registration or limited recognition. Specifically, the USPTO has created a process in § 11.11(g) by which an individual's registration or limited recognition may be revoked in limited circumstances.

Finally, the rule improves the registration examination and application process. Applicants for the registration examination now have the opportunity to obtain an extension of time in which to schedule and take the examination. Prior to implementation of this rule, applicants were required to submit a new application if they were unable to schedule the examination within the 90-day scheduling window. Now, they may simply pay a fee of \$115 to obtain an extension. This new fee is implemented by revisions to §§ 1.21(a)(1), 11.7(b), and 11.9(e). This is expected to streamline the process and reduce expense to applicants while also conserving agency resources.

Other Minor Changes

Minor edits, discussed below, are made throughout the regulations. These include increasing structural parallelism between similar provisions, such as §§ 11.24 and 11.29; harmonizing the post-employment restrictions in § 11.10 with those in 18 U.S.C. 207; and increasing the readability of provisions throughout, including §§ 11.7 and 11.9. They also include making corrections to spelling, grammar, and cross-references; harmonizing terminology; correcting syntax formats to comport with the **Federal Register** Document Drafting Handbook; and reorganizing paragraph structure. In sum, these amendments have been designed to benefit practitioners by clarifying and streamlining professional responsibility, obligations, and procedures.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on July 30, 2020, at 85 FR 45812, soliciting comments on the proposed amendments to 37 CFR parts 1 and 11. The USPTO received comments from two intellectual property organizations and four individual commenters representing law firms and individuals. These comments are publicly available at the Federal eRulemaking Portal at www.regulations.gov.

The Office received comments both generally supporting and objecting to

the revisions to the rules of practice. A majority of the commenters supported the rule but expressed concerns with specific revisions. A summary of the comments and the USPTO's responses are provided below.

Comment 1. One commenter urged the USPTO to end all uses of "hand signatures."

Response 1. The USPTO appreciates this suggestion and the public recognition of the steps already taken by the USPTO to respond to the extraordinary situation of the COVID-19 outbreak. See 85 FR 17502 (Mar. 30, 2020). The USPTO has published a separate rulemaking that proposes to eliminate the "original handwritten signature personally signed in permanent dark ink" requirement for certain documents set forth in 37 CFR 1.4(e)(1). See 84 FR 64800 (Nov. 25, 2019). A final rule that implements those revisions has been under consideration.

Comment 2. Three commenters expressed support for the USPTO's proposal to implement a mechanism for requesting an extension of time in which to schedule an examination but urged the USPTO not to impose a fee for the first use of this service by each applicant. They argued that it was not appropriate to charge a fee. Moreover, they asserted that the fee is not commensurate with the actual cost to the Office of processing the request for extension.

Response 2. The USPTO currently grants applicants a window of at least 90 days in which to schedule the registration exam with the testing service, which should be sufficient. Accordingly, there previously was no provision that expressly allowed extension requests to be made. Instead, applicants who were not able to schedule the registration exam within the granted window were required to reapply and incur the application-related fees again. Nonetheless, this final rule expressly permits such an extension. We disagree with the comment that the fee is not commensurate with the actual cost. The extension process requires coordination with an outside vendor and includes a number of other administrative steps that carry a cost burden.

Comment 3. Two commenters urged the USPTO to revise its definition of "practitioner" in § 11.1. They asserted that the definition causes most foreign attorneys to be classified as "non-practitioners," and thus practitioners who form partnerships with foreign attorneys and firms could be deemed to violate the prohibitions in § 11.504 against partnering or sharing fees with

non-practitioners: "The USPTO's current definition of 'practitioner' as excluding foreign lawyers causes the significant (and presumably unintended) consequence of thousands of practitioners potentially violating numerous USPTO Rules [of Professional Conduct] simply by virtue of the fact that they are part of a law firm (or in-house corporate legal department) that includes both U.S. and foreign lawyers." The commenters provided a citation to *Forming Partnerships with Foreign Lawyers*, ABA Formal Op. 01-423 (2001).

Response 3. This input is appreciated, but the commenters' suggestion for a further revision to the definition of "practitioner" is outside the scope of this rulemaking. However, the USPTO notes that this suggestion is generally consistent with the Office of Enrollment and Discipline's (OED) historical application of the USPTO Rules of Professional Conduct. OED recognizes that registered patent lawyers may form partnerships or other entities to practice law in which foreign lawyers are partners or owners, provided the foreign lawyers are members of a recognized legal profession in the jurisdiction in which they are licensed and the arrangement complies with the law of jurisdictions where the firm practices.

Comment 4. Three commenters urged the USPTO not to adopt the proposed § 11.19(e), which clarifies that the OED Director has discretion to choose any of the independent grounds of discipline under paragraph (b), where appropriate. The commenters characterized the proposed amendment as giving the OED Director "unfettered discretion" to choose whether to follow the reciprocal discipline process in § 11.24 or the ordinary disciplinary process of § 11.32. Two of these commenters also advocated for a policy that would require the USPTO to seek only identical or "less severe" reciprocal discipline in all cases in which a practitioner has been disciplined by another jurisdiction.

Response 4. The OED Director possesses the discretion to select a course of action under subpart C of part 11 appropriate to protect the public and maintain the integrity of the legal profession. Section 11.19(e) provides additional clarity to practitioners regarding the OED Director's mandate to protect the public and maintain the integrity of the legal profession. In the interests of fairness and efficiency, the USPTO generally pursues reciprocal discipline in response to public discipline of a practitioner by another jurisdiction. The efficiencies of adopting the findings of fact and pursuing the

discipline imposed by another jurisdiction are apparent. However, there have been rare instances in which circumstances have made it inadvisable to pursue identical reciprocal discipline. One example would be when the OED Director learns that a practitioner has been disciplined by another jurisdiction while subsequently learning of additional information of misconduct unknown to the other jurisdiction. In such a case, the interests of justice, efficiency, and protection of the public may call for the USPTO to pursue a § 11.32 proceeding to consolidate into a single proceeding the other jurisdiction's public discipline, as well as the additional information known by the OED Director. Conversely, there may be instances in which identical reciprocal discipline would be inappropriate. The ABA has noted that the "imposition of discipline or disability inactive status in one jurisdiction does not mean that every other jurisdiction in which the lawyer is admitted must necessarily impose discipline or disability inactive status." Comment to Rule 22, ABA Model Rules for Disciplinary Enforcement (July 16, 2020). An example might be when diversion would be appropriate under the USPTO's Diversion Pilot Program but diversion is unavailable under the jurisdiction that imposed the original discipline. The OED Director has always sought to exercise discretion in a manner that protects the public while treating practitioners fairly. For example, the OED Director already exercises the same discretion in reviewing petitions for reinstatement under § 11.60. While § 11.60 continues to authorize the OED Director in every case to require a petitioner to pass the registration examination (even if the petitioner was not a registered practitioner), the OED Director has been judicious in limiting the exercise of this authority to matters in which there is a relationship between the underlying conduct (or conduct since the underlying proceeding) and the requirement to pass the registration examination, such as a lack of competent representation in patent matters or a lapse in practice in patent matters. As such, the concern regarding the grant of discretion to the OED Director in § 11.19(e) to "choose any of the independent grounds of discipline under paragraph (b) of this section and to pursue any of the procedures set forth in this subpart in every disciplinary proceeding" does not appear to be borne out by experience.

Comment 5. One commenter suggested that explicit discretion be

added to close an investigation or proceeding under §§ 11.24, 11.25, 11.27, and 11.29 by settlement or a warning.

Response 5. The USPTO agrees that retaining the flexibility to close a case with a warning or through settlement is advisable. Section 11.19(e) already addresses this recommendation by clarifying that the “OED Director has the discretion . . . to pursue any of the procedures set forth in this subpart in every disciplinary proceeding,” indicating that the OED Director retains flexibility to issue a warning under § 11.21, pursue settlement under § 11.26, transfer to disability inactive status under § 11.29, permit diversion under the OED Diversion Pilot Program, or otherwise close an investigation under § 11.22(i). Moreover, §§ 11.24, 11.25, and 11.29 further clarify the OED Director’s discretion in this regard.

Comment 6. One commenter stated that the proposed § 11.22(c) would have required reporting certain events that were already required to be reported in §§ 11.24(a), 11.25(a), and 11.29(a)(1). To avoid redundancy, the commenter suggested removing the first sentence of proposed § 11.22(c) and amending “Upon receiving such notification” from the second sentence to “Upon receiving the notification required by § 11.24(a), § 11.25(a), or § 11.29(a)(1).”

Response 6. The USPTO adopts this suggestion with slight modification to reference all of § 11.29(a).

Comment 7. One commenter asserted that §§ 11.24, 11.25, 11.27, and 11.29 do not provide notice to a practitioner of the discretion referenced in § 11.19(e).

Response 7. The discretionary language in the rule provides appropriate notice. The proposed text already included discretionary language in §§ 11.24, 11.25, 11.27, and 11.29.

Comment 8. One commenter suggested that §§ 11.24, 11.25, 11.29, and 11.55 be further revised to expressly permit motions to extend the time to file for good cause.

Response 8. The USPTO declines to adopt this suggestion. Current practice permitting motions to extend the time to file responses for good cause will not be affected by this rule. The final rule does not foreclose petitions to suspend or waive non-statutory deadlines in an extraordinary situation, when justice requires, by the USPTO Director pursuant to § 11.3.

Comment 9. One commenter applauded the USPTO’s efforts to amend § 11.25(a) to reduce reporting burdens. However, two commenters found fault with the USPTO’s efforts to both reduce reporting requirements for minor traffic offenses in § 11.25(a) and ensure that reporting requirements were

uniform for similarly situated practitioners. The commenters appeared to argue that the \$300 threshold under which reporting would not be required was arbitrary and would have led to a disparate impact for practitioners in jurisdictions where fines are especially high.

Response 9. The USPTO adopts § 11.25(a) as proposed and declines to further revise the final rule. Because this amendment strictly reduces reporting obligations and imposes no additional burdens of any sort, the USPTO believes the latter comments to be unfounded. As amended, the provision eliminates the requirement to report convictions of all crimes except those not involving the use of alcohol or a controlled substance, not resulting in a fine in excess of \$300, and not resulting in the imposition of any other punishment. The USPTO is aware of only one state that classifies all traffic offenses as misdemeanors or felonies. Prior to this amendment, practitioners convicted of any traffic offense in that state were required to report such criminal convictions to the OED Director under § 11.25(a). As revised, § 11.25(a) now provides a basis for conscientious practitioners in every state to rest assured that they have complied with USPTO reporting requirements, sets a uniform standard that uses USPTO and practitioner resources efficiently, and ensures that the public is still protected from practitioners who disregard the law.

Comment 10. Three commenters suggested that the second sentence of § 11.26 be stricken. This sentence said, “Evidence shall not be excludable on the grounds that such evidence was presented or discussed in a settlement conference.” The commenters argued that this revision would create a disincentive to enter into settlement negotiations with the OED Director. They argued that a practitioner would have “no motivation to cooperate in settlement negotiations in which his or her statements could be admitted against him or her.”

Response 10. The USPTO is withdrawing this proposed revision to § 11.26 as unnecessary. However, the USPTO disagrees with the commenters’ characterization, which appeared to misconstrue the distinction between “evidence” and “offers of compromise and any statements about settlement.” The purpose of the proposed revision was to provide clearer language to practitioners to reduce attempts to shield or “immunize” otherwise admissible evidence merely by presenting or discussing such evidence at a settlement conference. It remains true that otherwise admissible evidence

cannot be excluded in a USPTO disciplinary proceeding on the grounds that such evidence was presented or discussed in a settlement conference. The proposed rule continued to assure a practitioner engaged in settlement discussions with the USPTO that any offers of compromise and any statements about settlement made during the course of the settlement conference would not be admissible in a disciplinary proceeding—a provision that was previously in the rule and still remains.

Comment 11. Two commenters objected to the proposed amendments to § 11.27 pertaining to exclusion on consent. The commenters contended that a practitioner’s request for exclusion in lieu of a disciplinary proceeding must be granted. Under this view, the commenters faulted the amendment for allegedly injecting discretion into the process. The commenters asserted that this would be contrary to that of the majority of jurisdictions in the United States and pointed to the example of Rule 21 of the ABA Model Rules for Disciplinary Enforcement.

Response 11. The previous version of § 11.27 never required the USPTO Director to approve every affidavit in support of exclusion on consent. Unchanged by this final rule is the provision in § 11.27(a)(2) that requires the affidavit’s statement of the allegations of misconduct to be set forth “to the satisfaction of the OED Director.” Also unchanged is the provision in § 11.27(b) that provides for the USPTO Director’s “review and approval.” Furthermore, Rule 21 of the ABA Model Rules for Disciplinary Enforcement, which the comments referenced, specifically contemplates instances in which stipulated discipline may not be approved.

Comment 12. One commenter expressed concern about a potential discrepancy between §§ 11.36(c) and 11.49. Section 11.36 refers to a *special matter of defense* while § 11.49 refers to an *affirmative defense*. The commenter stated that a special matter of defense is not necessarily coextensive or synonymous with an affirmative defense.

Response 12. While it may be true that “[a] ‘special matter of defense’ is not necessarily coextensive or synonymous with an ‘affirmative defense,’” the USPTO does not perceive these provisions to be in conflict.

Comment 13. One commenter expressed support for the proposed amendments to § 11.52 to clarify the scope of discovery and regarding expert witnesses, which were described as

“track[ing] the Fed. R. Civ. P. requirements and should thus be familiar to many practitioners.” Another commenter suggested that the proposed § 11.52 be further revised to specify express limits on written discovery and, in particular, suggested limiting admissions, interrogatories, and documents to be produced to no more than 10 or 15, including all discrete subparts.

Response 13. The USPTO declines to further revise § 11.52 as suggested by the commenter. Under both this rule and the previous version of § 11.52, a hearing officer must determine whether any proposed discovery is reasonable and relevant. Once this test is met, the hearing officer must limit discovery to that which is reasonable. Because the reasonableness of discovery will depend on the facts and circumstances of the case at hand, the Office believes it would be inadvisable to restrict the hearing officer’s ability to preside over the case by reducing the flexibility in limiting discovery.

Comment 14. Two commenters expressed general approval for the proposed revisions to § 11.58 but suggested that § 11.58(c)(5) be further amended to remove the requirement to serve notices by “certified mail, return receipt requested,” asserting concerns as to both cost and practicality. The commenters argued that because the nature of virtual practice results in regular changes of physical address, email would be the most appropriate means of ensuring that clients receive notices of discipline.

Response 14. The USPTO declines to adopt this suggestion. Signed physical certificates of delivery remain the best evidence of the delivery of the notices required by the rule under typical circumstances. That being said, nothing prevents the use of email to provide additional notice in appropriate circumstances.

Comment 15. One commenter suggested that the OED Director be required “to publish all cases, including those with adverse decisions against the USPTO (*i.e.*, dismissals)” and that “the USPTO make file histories regarding published Final Orders [sic] available for public inspection, without charge.”

Response 15. This comment raises an issue that is outside the scope of this rulemaking, and thus the USPTO declines to adopt this recommendation at this time. The USPTO is bound by the Privacy Act of 1974, which provides that “[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a

written request by, or with the prior written consent of, the individual to whom the record pertains [subject to 12 exceptions not relevant here].” 5 U.S.C. 552a(b).

Comment 16. Two commenters suggested that the USPTO incorporate in its regulations the “Comments” to the ABA Model Rules. The ABA Comments “are intended as guides to interpretation, but the text of each Rule is authoritative.” ABA Model Rules, Preamble at Comment 21. The commenters asserted that doing so would help patent agents comply with the USPTO Rules of Professional Conduct because, as they asserted, patent agents are unfamiliar with the nature of their ethical obligations under the USPTO Rules of Professional Conduct. One commenter further suggested that the Comments to ABA Model Rule 1.1 be adopted for § 11.101.

Response 16. These comments raise issues that are outside the scope of this rulemaking, and thus the USPTO declines to adopt this suggestion at this time. The USPTO reminds practitioners that, among other sources, “[a] practitioner also may refer to the Comments and Annotations to the ABA Model Rules, as amended through August 2012, for useful information as to how to interpret the equivalent USPTO Rules.” 78 FR 20180.

Comment 17. One commenter urged the USPTO to revise the registration examination to include a “requirement that any non-attorney applicant for registration be able to demonstrate to the satisfaction of the OED Director at least [sic] some level of proficiency in the USPTO’s Rules of Professional Conduct.”

Response 17. This comment raises an issue that is outside the scope of this rulemaking, and thus the USPTO declines to adopt this recommendation at this time. The content of the registration examination already includes questions regarding the USPTO Rules of Professional Conduct. Moreover, all individuals who practice before the Office are expected to be familiar with, and abide by, all applicable rules, to include the USPTO Rules of Professional Conduct.

Comment 18. One commenter suggested that the USPTO require patent agents and practitioners granted limited recognition, but not patent attorneys, to make an additional objective demonstration of their grasp of professional ethics beyond the registration exam, such as successional completion of the Multistate Professional Responsibility Examination or an ethics course through a law school. This commenter also suggested

that the USPTO impose mandatory continuing legal education (CLE) requirements on patent practitioners, which would be considered to be satisfied by patent attorneys already meeting another jurisdiction’s mandatory CLE requirement.

Response 18. This comment raises an issue that is outside the scope of this rulemaking, and thus the USPTO declines to adopt these recommendations at this time. Moreover, it is noted that the USPTO recently revised § 11.11(a) to provide a mechanism for patent practitioners to be recognized for CLE, including ethics instruction, that they have taken. *See* 85 FR 46932, 46992 (Aug. 3, 2020). *See also* 85 FR 64128 (Oct. 9, 2020) (notice of proposed CLE guidelines).

Comment 19. One commenter expressed support for the proposed amendment to § 11.106(b) allowing a practitioner to disclose information for the purpose of detecting and resolving conflicts of interest. Another commenter suggested further revising proposed § 11.106 to clarify the interaction with the duty of disclosure under § 1.56.

Response 19. The comments raise issues that are outside the scope of this rulemaking, and thus the USPTO declines to adopt these suggestions at this time.

Comment 20. Three commenters suggested that the USPTO revise §§ 11.701, 11.702, and 11.703 to conform with the 2018 amendments to the ABA Model Rules.

Response 20. As an initial matter, the USPTO appreciates the opportunity to clarify that it is revising §§ 11.702 and 11.703 to align with the 2018, not the 2012, amendments to ABA Model Rules 7.2 and 7.3. As to ABA Model Rule 7.1, the 2018 amendments revised only the comments to the rule, not the text of the rule itself. As such, this rulemaking revises only §§ 11.702 and 11.703. Thus, upon conclusion of this rulemaking, §§ 11.701, 11.702, and 11.703 will conform to the text of Model Rules 7.1, 7.2, and 7.3 after the 2018 ABA amendments.

Comment 21. Three commenters urged the USPTO to eliminate §§ 11.704 and 11.705 on the grounds that the 2018 amendments to the ABA Model Rules struck the parallel Model Rules 7.4 and 7.5.

Response 21. The USPTO declines to adopt this suggestion at this time. Many of the provisions of these rules were added to the Comments to other ABA Model Rules. For example, restrictions formerly found in ABA Model Rule 7.4 have been moved to the Comments of ABA Model Rule 7.2. Because the USPTO has declined to adopt the

Comments to the ABA Model Rules for the reasons set forth above, it is appropriate that §§ 11.704 and 11.705 remain in force at this time.

Comment 22. One commenter urged the USPTO to “make its pilot program for disciplinary diversion a permanent part of the USPTO’s rules in subpart [sic] 11.”

Response 22. This comment raises an issue that is outside the scope of this rulemaking, and thus the USPTO declines to adopt this suggestion at this time. However, on November 15, 2019, the OED Diversion Pilot Program was extended for a three-year term (until November 15, 2022). Extension of the pilot diversion program will enable the USPTO to gather additional information necessary to evaluate the diversion criteria and processes currently used to inform a determination of whether the diversion program should be made permanent. The USPTO also notes that this rule, by revising § 11.22(h), clarifies that the OED Director may resolve a disciplinary investigation in a manner that does not exclude diversion.

Changes From Proposed Rule

As discussed in more detail below, the following sections contain changes from the proposed rule:

Section 11.10 is modified to bring the undertaking in line with the remaining provisions of the section.

Section 11.11 is updated to reflect intervening changes to administrative suspension, inactivation, resignation, reinstatement, and revocation in another rulemaking. *See* 85 FR 46932 (Aug. 3, 2020).

Section 11.22(c) is changed to reflect improved phrasing as suggested by a public comment. *See* Comment and Response 6, above.

The previously proposed changes to § 11.26 are not included in this final rule. *See* Comment and Response 10, above.

Discussion of Specific Changes in This Rule

This rule eliminates the fee in § 1.21(a)(1)(ii)(B) for taking the registration examination at the USPTO’s offices in Alexandria, Virginia. The USPTO no longer administers the paper-based examination in its offices. The computer-based examination will continue to be offered at thousands of testing centers across the United States.

Under this rule, the USPTO amends §§ 1.21(a)(1), 11.7(b), and 11.9(e) to provide applicants for registration or limited recognition the ability to request extensions of time to schedule the registration exam for a fee. Currently, applicants are assigned a window of

time in which to schedule and sit for the registration examination. Applicants who do not take the examination before the expiration of that window must reapply and again pay the application and test administration fees. The ability to request extensions of time saves those applicants who require more time to prepare for the examination or are unable to sit for the examination within the window from having to reapply and again pay the application and test administration fees. This fee is significantly less than the existing application and examination fees that are due from an applicant who failed to take the registration examination during the test window. The fee seeks to recover the estimated average cost to the Office of related processing, services, and materials. The authorization for this fee is 35 U.S.C. 41(d)(2)(A).

Under this rule, the USPTO amends § 1.21(a)(9) to provide a heading to clarify the nature of the fees listed thereunder.

The rule amends § 11.1 to clarify several definitions and to correct typographical errors. The terms “conviction” and “convicted” are revised to correct the spelling of “nolo contendere.” The term “practitioner” is revised to eliminate surplus within the definition. The term “register” is added alongside “roster” to clarify that both terms carry the same meaning. The term “serious crime” currently encompasses all felonies. However, not all states classify crimes as felonies and misdemeanors. To ensure consistent treatment among similarly situated practitioners, the definition is revised to encompass any criminal offense punishable by death or imprisonment of more than one year. This revision harmonizes the definition with that found in the U.S. Criminal Code, in particular, 18 U.S.C. 3559(a). The term “state” is revised to reflect the correct capitalization of “commonwealth.”

The rule amends § 11.2(b)(2) to eliminate an unnecessary reference to § 11.7(b). This revision creates no change in practice.

The rule amends § 11.2(b)(4) to clarify that the OED Director is authorized to conduct investigations of persons subject to the disciplinary jurisdiction of the Office. The amendments also replace the term “accused practitioner” with “subject of the investigation.”

The rule amends § 11.4, currently reserved, to define how time shall be computed in part 11. The computational method aligns with the Federal Rules of Civil Procedure.

The rule amends § 11.5(a) by adding a paragraph heading.

The rule amends § 11.5(b) to change the term “patent cases” to “patent matters,” amends § 11.5(b)(1) to change the term “other proceeding” to “other patent proceeding” to clarify that this subparagraph refers only to patent proceedings, and clarifies the definition of practice before the Office in trademark matters in § 11.5(b)(2). Section 11.5(b) continues to provide that nothing in § 11.5 prohibits a practitioner from employing or retaining a non-practitioner assistant under the supervision of the practitioner to assist in matters pending before, or contemplated to be presented to, the Office.

The rule amends § 11.7(b) to eliminate the requirement for applicants to refile previously submitted documentation after one year. The provisions regarding retaking the examination are moved from subparagraph (b)(1)(ii) to (b)(2). Although an applicant may apply to take the examination an unlimited number of times, subparagraph (b)(2) provides additional opportunities upon petition for an applicant to demonstrate preparedness for each attempt after the fifth attempt. This provision maintains the integrity of the examination and is in line with the practice of various state bars. The provisions regarding denial of admission to the examination and notices of incompleteness are moved from (b)(2) to (b)(3), which is currently reserved.

Under this rule, the USPTO amends § 11.7(d)(3)(i)(B) to change the term “patent cases” to “patent matters.”

The rule strikes the last sentence of § 11.7(e) to eliminate conflict with § 11.7(b)(2).

The rule amends § 11.7(g)(1) and (g)(2)(ii) to clarify that OED may accept a state bar’s determination of character and reputation as opposed to simply character. The amendment also corrects an internal citation and updates a reference to requests for information and evidence in enrollment matters.

The rule amends § 11.7 by adding a new paragraph (l) that clarifies that a registered patent agent who becomes an attorney may be registered as a patent attorney upon paying the required fee and meeting any additional requirements.

Under this rule, the USPTO amends § 11.9(a) to improve clarity and § 11.9(b) to update a cross-reference. The revisions make no change in practice.

The rule amends § 11.9 by importing the provisions of § 11.7(a) and (b) into new paragraphs (d) and (e) of § 11.9. This clarifies the application process as it applies to those seeking limited recognition under § 11.9(b) but makes no substantive procedural changes.

The rule amends § 11.9 by adding a new paragraph (f) to clarify the documentation required to obtain reinstatement of limited recognition. This revision generally restates the practice currently set forth in § 11.7(b). It provides that individuals whose limited recognition has been expired for five years or longer at the time of application for reinstatement must provide objective evidence that they continue to possess the necessary legal qualifications to practice in patent matters before the Office. Retaking and passing the registration examination is one way to establish such objective evidence.

The rule amends § 11.10(a) to clarify that only authorized practitioners may represent others before the Office in patent matters. This clarification is not intended to affect the rules governing practice before the Patent Trial and Appeal Board in parts 41 and 42 of this chapter.

The rule amends § 11.10(b)(1) and (2) by striking the phrase “or assist in any manner the representation of” in the two instances in which it appears. The purpose of this revision is to carry out the USPTO’s intent of ensuring that the restrictions of the post-employment agreement called for by the provision are coextensive with the post-employment restrictions set forth in 18 U.S.C. 207, a criminal statute.

The rule deletes § 11.10(b)(3), (b)(4), and (c), which described words and phrases used in 18 U.S.C. 207. No change in practice is intended by these deletions, as these provisions are defined in 5 CFR.

The rule deletes § 11.10(d) and (e) because these practice prohibitions are elsewhere set forth in law and regulation. Notwithstanding the elimination of § 11.10(d), USPTO employees remain barred from prosecuting, or aiding in the prosecution of, any patent or trademark application before the Office by virtue of conflict-of-interest statutes, such as 18 U.S.C. 203 and 205, as well as regulations, such as those promulgated by the Office of Government Ethics in 5 CFR chapter XVI. Similarly, the truism in § 11.10(e)—that practice before the USPTO by Government employees is subject to applicable conflict-of-interest laws, regulations, or codes of professional responsibility—is already set forth in § 11.111.

The rule amends § 11.11 by correcting the capitalization of the title of the “OED Director.”

Under this rule, the USPTO amends § 11.11(b) to change the term “patent cases” to “patent matters,” to clarify the

nature of the notice called for in paragraph (b)(1) and improve syntax.

The rule amends § 11.11(b)(3) to clarify that the OED Director may withdraw a notice to show cause where the practitioner who is subject to such notice has satisfied the notice’s requirements prior to the USPTO Director making a decision on such notice.

The rule amends § 11.11 by adding a new subparagraph (b)(7) to clarify that administratively suspended practitioners must apply for reinstatement under paragraph (f)(1) in order to be reinstated.

The rule amends § 11.11(c) to simplify the process for requesting reactivation and to replace the term “roster” with the term “register.”

The rule amends § 11.11(e) to clarify the eligibility requirements for practitioners who request to resign. These revisions make no substantive change.

The rule amends § 11.11(f)(2) to improve clarity and harmonize the requirements for reactivation with the requirements for reinstatement following administrative suspension. Specifically, individuals who have been administratively inactive for five or more years subsequent to separation from the Office or cessation of employment in a judicial capacity are required to submit objective evidence that they continue to possess the necessary legal qualifications. Retaking and passing the registration examination is one way to establish such objective evidence.

Under this rule, the USPTO amends § 11.11 by adding a new paragraph (g) to allow administrative revocation of registration or limited recognition based on mistake, materially false information, or the omission of material information. Registration or limited recognition will only be revoked after the issuance of a notice to show cause and an opportunity to respond. This aligns with the existing provisions in §§ 11.7(j), 11.11(b), 11.20(a)(4), and 11.60(e).

The rule amends § 11.18(c)(2) to set forth the correct title of the Director of the Office of Enrollment and Discipline.

The rule amends § 11.19(a) to change “patent cases” to “patent matters” and to clarify that a non-practitioner is subject to the USPTO’s disciplinary authority if the person engages in or offers to engage in practice before the Office without proper authority. The phrase “including by the USPTO Director,” which modifies various types of public discipline, is deleted as surplus. The USPTO Director’s authority to administer discipline or transfer a practitioner to disability

inactive status is firmly established. Thus, the inclusion of this phrase is unnecessary.

The rule amends § 11.19(b)(1)(ii) to include discipline on professional misconduct grounds alongside discipline on ethical grounds. The inclusion of both is aimed at making clear that discipline for professional misconduct also constitutes grounds for discipline.

Section 11.19(c) is amended to properly cite a subpart of part 11.

The rule amends § 11.19 by adding a new paragraph (e). This provision clarifies that the OED Director may select any disciplinary procedure or procedures that are appropriate to the situation at hand. For example, the OED Director is authorized, in appropriate circumstances, to pursue reciprocal discipline under § 11.24 while also instituting a disciplinary proceeding under § 11.32.

This rule amends § 11.20(a)(4) to provide that the conditions of probation shall be stated in the order imposing probation.

The rule amends § 11.20(c) to improve syntax and to clarify that this provision merely describes the process set forth in § 11.29 for transferring to disability inactive status.

The rule amends § 11.21 to remove the adjective “brief” that modifies the phrase “statement of facts.” The length of a statement of facts depends on the complexity of the matter and the issues presented. This revision allows a level of detail in a statement of facts appropriate to the particular matter.

The rule amends § 11.22(c), currently reserved, to require a practitioner to notify the OED Director of the practitioner becoming publicly disciplined, disqualified from practice, transferred to disability status, or convicted of a crime, within 30 days of such occurrence, as already required in §§ 11.24, 11.25, or 11.29. This revision also clarifies that a certified copy of the record or order regarding the discipline, disqualification, conviction, or transfer to disability status is clear and convincing evidence of such event.

The rule amends § 11.22(g) to correct erroneous citations to § 11.22(b)(1) and (b)(2). The correct citations are § 11.23(b)(1) and (b)(2).

Under this rule, the USPTO amends § 11.22(h) to clarify that the list of actions that the OED Director may take upon the conclusion of an investigation is not necessarily limited to the four actions enumerated therein.

The rule amends § 11.24(a) to provide that a certified copy of the record or order regarding public discipline in another jurisdiction shall establish a

prima facie case by clear and convincing evidence that a practitioner has, in fact, been publicly disciplined by that jurisdiction. In addition, the provision is amended to clarify that the OED Director is permitted to exercise discretion in whether to pursue reciprocal discipline in any given matter.

The rule amends § 11.24(b) to enhance readability. No change in practice is intended.

The rule amends § 11.24(d)(1) to clarify the USPTO Director's prerogative to order that a disciplinary record be supplemented with further information or argument.

The rule amends § 11.24(e) to clarify that a final adjudication in another jurisdiction that a practitioner has committed ethical misconduct, regardless of the evidentiary standard applied, shall establish a prima facie case that the practitioner has engaged in misconduct under § 11.804(h). This change does not affect the availability of the defenses specified in § 11.24(d)(1).

Under this rule, the USPTO amends § 11.25(a) to remove the requirement to self-report certain traffic violations where the sole punishment adjudicated is a fine of \$300.00 or less. The provision also now clarifies that the OED Director is permitted to exercise discretion in whether to pursue discipline in any given matter under this section.

The rule amends § 11.25(b)(3) to clarify that the USPTO Director may order that a disciplinary record be supplemented with further information or argument.

The rule amends § 11.25(e)(2) to allow practitioners who are disciplined by the USPTO upon conviction of a serious crime to apply for reinstatement immediately upon completing their sentence, probation, or parole, whichever is later, provided they are otherwise eligible for reinstatement. Under the current rule, a practitioner must wait at least five years after the last of these events before he or she is eligible to apply for reinstatement.

The rule amends § 11.27(b) and (c) to clarify procedures for exclusion on consent. Specifically, the revision allows the OED Director to file a response to a § 11.27(a) affidavit. Nothing herein is intended to alter the requirements under § 11.27(a), including but not limited to the § 11.27(a)(2) requirement that the statement of the nature of the pending investigation or pending proceeding shall be specifically set forth in the affidavit to the satisfaction of the OED Director. The revision also removes and

reserves § 11.27(c), in light of the provisions of revised § 11.27(b).

The rule amends § 11.28(a) to replace the term "patent cases" with "patent matters," clarify the requirements for moving to hold a proceeding in abeyance, remove the requirement that such motion be made prior to a disciplinary hearing, and update cross-references.

The rule amends § 11.29(a) to clarify that the OED Director possesses discretion as to whether to request that a practitioner be transferred to disciplinary inactive status.

The rule amends § 11.29(b) to incorporate the "clear and convincing" burden of proof currently set forth in § 11.29(d) that a practitioner must satisfy to avoid a reciprocal transfer to disability inactive status. The rule enlarges the period of time to 40 days (instead of 30 days) for a practitioner to respond to the OED Director's request to transfer the practitioner to disability inactive status.

The rule amends § 11.29(d) by revising the heading of the paragraph. The provision is reorganized and revised to clarify the USPTO Director's prerogative to order that the record be supplemented with further information or argument. The revisions to § 11.29(b) and (d) parallel the organizational structure of § 11.24.

Under this rule, the USPTO amends § 11.29(g) by clarifying that a practitioner in disability inactive status must comply with both §§ 11.29 and 11.58, and not merely § 11.58. This revision makes no change in practice and aligns the provision with § 11.58.

The rule amends § 11.29(i) by updating cross-references. The revisions make no change in practice.

The rule amends § 11.34(c) to expressly allow a complaint to be filed in a disciplinary proceeding by delivering, mailing, or electronically transmitting the document to a hearing officer.

The rule amends § 11.35(a) to make minor corrections to syntax.

The rule amends § 11.35(c) to state that a complaint in a disciplinary matter may be served on the respondent's attorney in lieu of the respondent, if the respondent is known to the OED Director to be represented by an attorney under § 11.40(a). This revision permits the OED Director to serve the respondent, respondent's attorney, or both.

The rule amends § 11.39(a) to clarify the process by which hearing officers are designated in disciplinary proceedings. This amendment does not affect the USPTO Director's authority to designate administrative law judges to

serve as hearing officers. In fact, the rule specifically amends § 11.39(b) to clarify that administrative law judges appointed in accordance with 5 U.S.C. 3105 may be designated as hearing officers.

The rule amends § 11.39(f) to correct a cross-reference.

The rule amends § 11.40 by dividing the current paragraph (b) into two paragraphs to facilitate ease in reading. In all other respects, the provision remains unchanged.

The USPTO amends § 11.41(a) to expressly provide that papers may be filed by delivering, mailing, or electronically transmitting such documents to a hearing officer.

The rule amends § 11.43 by changing the heading to clarify that the provision applies only to motions before a hearing officer and not to those before the USPTO Director. As amended, the section requires motions to be accompanied by written memoranda setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The revisions also require that responses to motions be filed within 21 days and served on the opposing party, and reply memoranda served within 14 days after service of the opposing party's response. In addition, the memoranda should be double-spaced and printed in 12-point font, unless otherwise ordered by the hearing officer.

The USPTO amends § 11.44(a) to allow scheduling of a hearing only on a date after the time for filing an answer has elapsed.

This rule amends § 11.44(b) to clarify the sanctions a hearing officer may impose for failure to appear at a disciplinary hearing.

The rule amends § 11.50 to clarify the existing practice of prohibiting the admission of speculative evidence.

The rule amends § 11.51(a) by revising it and dividing it into a new § 11.51(a)-(g). The revisions aim to provide clarity and confirm the existing regulatory requirement that if a respondent demands testimony or the production of documents from a USPTO employee, the respondent must comply with part 104 of chapter I. The rule also makes clear that a deposition may be videotaped if desired. The term "deposition expenses" replaces the phrase "expenses for a court reporter and preparing, serving, and filing depositions." Deposition expenses may include, but are not limited to, fees for court reporters, videographers, transcripts, and room rentals; witness appearance and travel; service of process; and costs for preparing,

servicing, and filing depositions. This revision does not affect expenses recoverable under § 11.60(d)(2).

The rule amends § 11.51(b) by redesignating it as § 11.51(h). The revisions to this paragraph make no change to existing practice.

The rule amends § 11.52 by reorganizing the section to improve clarity. The revisions limit the scope of written discovery to relevant evidence only, as opposed to evidence that may be reasonably calculated to lead to the discovery of admissible evidence. The revisions also provide that requests for admission may be used to admit the genuineness of documents and provide consequences for the failure to respond to requests for admission. Finally, the revisions expand the scope of information that parties must provide regarding expert witnesses to include a complete statement of all opinions to which the expert is expected to testify, the basis and reasons therefor, and a description of all facts or data considered by the expert in forming the opinions.

The rule amends § 11.53 to specify the timing and other requirements of post-hearing memoranda, unless otherwise ordered by the hearing officer. The rule also allows the hearing officer to enlarge the time permitted for filing post-hearing memoranda and to increase page limits upon a showing of good cause.

The rule amends § 11.54 to require a hearing officer to transmit the record of the proceeding to the OED Director within 14 days of the date of the initial decision, or as soon as practicable. The rule amends § 11.54(a)(1) by requiring an initial decision to make “specific” references to the record instead of “appropriate” references to the record. The provision currently located in § 11.54(a)(2) that describes the process that the hearing officer shall take with respect to the transmission of the decision and the record is moved to § 11.54(c). It is also revised to require the hearing officer to forward to the OED Director the record of proceedings within 14 days, or as soon as practicable, after the date of the initial decision. In addition, the provision currently located in § 11.54(a)(2), that discusses the point in time at which the decision of the hearing officer becomes the decision of the USPTO Director, is moved to § 11.54(d). This section is also amended to remove an unnecessary reference to default judgments. These revisions do not alter the result that any decision of a hearing officer, if not appealed, becomes final without regard to whether the decision results from default.

The USPTO amends § 11.55 to more closely align the language with changes to the Federal Rules of Appellate Procedure and provide clarity as to the responsibilities of parties during appeals to the USPTO Director. The revisions establish a procedure for filing notices of appeal and provide briefing timelines. Prior to this rule, an appellant was allowed 30 days to file a brief. This rule now allows 14 days in which to file a notice of appeal and 45 days thereafter in which to file the appellate brief. The rule also removes the former paragraph (i), which was duplicative of a similar provision in § 11.54. Finally, the revisions added paragraph (o) that governs motions practice before the USPTO Director. The procedures in paragraph (o) generally parallel those in § 11.43.

This rule amends § 11.56(c) to allow a party to file a response to a request for reconsideration within 14 days after such request is made. The revision requires that such request be based on newly discovered evidence or clear error of law or fact.

The rule amends § 11.57 by reorganizing the provision and revising it to conform with Local Civil Rule 83.5 of the Local Rules for the U.S. District Court for the Eastern District of Virginia (<https://www.vaed.uscourts.gov/sites/vaed/files/LocalRulesEDVA.pdf>). The provision now requires that any petition for review of a final decision of the USPTO Director must be filed within 30 days after the date of the final decision.

Under this rule, the USPTO amends § 11.58 by revising, subdividing, and renumbering the provisions describing the duties of disciplined practitioners or practitioners on disability inactive status. The USPTO believes that these revisions will make it easier for disciplined practitioners to more easily comply with § 11.58. Where the practitioner believes compliance with the rule would be unduly cumbersome, a practitioner is permitted to petition for relief. The revised rule continues to allow a suspended or excluded practitioner to act as a paralegal provided certain conditions are met, such as serving under the supervision of a practitioner as defined in part 11. The revisions permit, rather than require, the USPTO Director to grant a period of limited recognition to allow a disciplined practitioner to wind up his or her practice. These revisions to § 11.58 in no way limit the OED Director's ability to take action for violations of the rule. For example, the OED Director is still authorized to take action against a practitioner for violating the terms of disciplinary probation or to seek exclusion or an additional

suspension for practitioners who violate disciplinary rules while excluded, suspended, or in disability inactive status. Finally, the revisions strike references to resigned practitioners. Obligations relating to resigned practitioners are consolidated in § 11.11(e) and (f)(3).

The rule amends § 11.60 to remove references to resigned status. Procedures for resignation and reinstatement from a resigned status are consolidated in § 11.11. For this reason, the USPTO amends § 11.60(b) and (c) to eliminate references to reinstatement and § 11.58 compliance requirements for resigned practitioners. The USPTO also amends the heading of § 11.60 to explicitly reflect that it applies only to disciplined practitioners. The rule re-designates the current § 11.60(f) as § 11.60(g) and amends the paragraph by inserting a new provision that clarifies that a final decision by the OED Director denying reinstatement to a practitioner is not a final agency action. A suspended or excluded party dissatisfied with the decision of the OED Director regarding his or her reinstatement may seek review of the decision by petitioning the USPTO Director in accordance with § 11.2(d).

The rule re-designates the current § 11.60(g) as § 11.60(h) and amends the paragraph to allow a notice of a practitioner's intent to seek reinstatement to be published prior to the expiration date of the suspension or exclusion. The purpose of this revision is to speed the processing of petitions for reinstatement while still providing the requisite public notice.

The rule amends § 11.106(b) to allow a practitioner to reveal information relating to the representation of a client to detect and resolve conflicts of interest arising from the practitioner's change of employment or from changes in the composition or ownership of a law firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. This amendment brings this provision into alignment with the 2012 amendments to ABA Model Rule 1.6.

The rule amends § 11.106 by adding a new paragraph (d) that requires a practitioner to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. This amendment brings this provision into alignment with the 2012 amendments to ABA Model Rule 1.6.

The rule amends § 11.118 to align with a 2012 amendment to ABA Model Rule 1.18. The ABA amended Model Rule 1.18 to more narrowly define a

prospective client as someone who “consults with” a lawyer rather than someone who merely “discusses” the possibility of forming a lawyer-client relationship.

The rule amends § 11.702 to establish standards that, if met, would qualify practitioners to state they are certified specialists in particular fields of law. This amendment brings this provision into alignment with the 2018 amendments to ABA Model Rule 7.2.

Under this rule, the USPTO amends § 11.703 to clarify that the limitations on solicitation apply to any person without regard to whether the practitioner considers the targets of the solicitation to actually be prospective clients. This amendment brings this provision into alignment with the 2018 amendments to ABA Model Rule 7.3.

The rule amends § 11.704(e) to clarify that individuals granted limited recognition under § 11.9 may not use the designation “registered.”

The rule amends § 11.804(b) to clarify that being convicted of a qualifying crime is a form of misconduct.

The rule amends § 11.804(h) to provide that misconduct includes being publicly disciplined on ethical or professional misconduct grounds by a country having disciplinary jurisdiction over the practitioner.

Rulemaking Requirements

A. *Administrative Procedure Act*: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies that interpretation of a statute is interpretive); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends

or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public’s input.

B. *Regulatory Flexibility Act*: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule do not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The changes in this rule fall into one of three categories: (1) Harmonization of the USPTO Rules of Professional Conduct with the ABA Model Rules of Professional Conduct; (2) changes to the rules governing the recognition to practice before the Office to implement new requirements and simplify and otherwise improve consistency with existing requirements to facilitate the public’s compliance with existing regulations, including revisions to timeframes, procedures concerning the registration exam, provisions related to the revocation of an individual’s registration or limited recognition in limited circumstances, and provisions for reinstatement; and (3) non-substantive changes, such as increased structural parallelism between similar provisions; increased readability of provisions; corrections to spelling, grammar, and cross-references; harmonization of terminology; correction of syntax formats to comport with the *Federal Register Document Drafting Handbook*; reorganization of paragraph structure within particular rules; and other changes to improve clarity in the regulations.

This rule applies to the approximately 47,000 patent practitioners registered or granted limited recognition to appear before the Office, as well as licensed attorneys practicing in trademark and other non-patent matters before the Office. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the rule. However, a large number of the changes in this rule are not expected to have any impact on otherwise regulated entities. For example, correction of

spelling and grammar, harmonization of terminology, correction of syntax formats, and reorganization of paragraph structures are administrative in nature and have no impact on otherwise regulated entities.

The USPTO has also changed the rules governing the recognition to practice before the Office and certain rules governing the process of investigations and conduct of disciplinary proceedings to clarify existing policy and practice and to update the USPTO Rules of Professional Conduct to reflect widely adopted changes to the ABA Model Rules of Professional Conduct. These revisions impact rules of procedure and are not expected to substantively impact parties. The intent of these changes is to make the USPTO regulations more clear and to streamline procedural requirements. Where the rule arguably increases regulatory burden, such burdens are minimal and outweighed by the benefits provided.

This rule also provides applicants for registration or limited recognition the ability to request extensions of time to schedule the registration exam for a fee. This new fee of \$115 helps recover the estimated average cost to the Office of related processing, services, and materials. The USPTO expects that this increased scheduling flexibility will save those applicants who would have otherwise missed the window in which to sit for the registration examination the time and expense of having to reapply to take the examination. Effective October 2, 2020, the cost of reapplying for the examination is \$320, exclusive of any nonrefundable fees paid to the commercial testing service that administers the examination. See 85 FR 46932 (Aug. 3, 2020). The USPTO estimates that this new regulatory flexibility will save the public at least \$102,500. The authorization for this fee is 35 U.S.C. 41(d)(2)(A).

In sum, any requirements resulting from these changes are of minimal or no additional burden to those practicing before the Office. For these reasons, this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. *Executive Order 12866 (Regulatory Planning and Review)*: This rulemaking has been determined to be not significant for purposes of Executive Order 12866.

D. *Executive Order 13563 (Improving Regulation and Regulatory Review)*: The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify

the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking does not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking does not affect a taking of private property or otherwise have taking implications

under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking does not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act. The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under OMB control numbers 0651–0012 (Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO) and 0651–0017 (Practitioner Conduct and Discipline). In addition, modifications to 0651–0012 because of this rulemaking have been submitted to OMB for approval. The modifications include updating the process under 37 CFR 11.7 and 11.9 for the Form PTO–158, Application for Registration to Practice Before the USPTO, to include the option for applicants to extend their time window to schedule their registration examination, therefore reducing the number of applicants who would need to reapply because they did not take the examination in time. The USPTO estimates that the number of Applications for Registration to Practice Before the USPTO will decrease by 500 responses due to applicants obtaining an extension rather than reapplying for their registration.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office amends 37 CFR parts 1 and 11 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.21 by removing and reserving paragraph (a)(1)(ii)(B), adding paragraph (a)(1)(iv), and adding

introductory text to paragraph (a)(9) to read as follows:

§ 1.21 Miscellaneous fees and charges.

- * * * *
- (a) * * *
- (1) * * *
- (iv) Request for extension of time in which to schedule examination for registration to practice (non-refundable): \$115.00.
- * * * *
- (9) Administrative reinstatement fees:
- * * * *

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

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

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 4. Amend § 11.1 by revising the definitions of “Conviction or convicted,” “Practitioner,” “Roster or register,” “Serious crime,” and “State” to read as follows:

§ 11.1 Definitions.

* * * *

Conviction or convicted means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendere* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

* * * *

Practitioner means:

- (1) An attorney or agent registered to practice before the Office in patent matters;
- (2) An individual authorized under 5 U.S.C. 500(b), or otherwise as provided by § 11.14(a), (b), and (c), to practice before the Office in trademark matters or other non-patent matters;
- (3) An individual authorized to practice before the Office in patent matters under § 11.9(a) or (b); or
- (4) An individual authorized to practice before the Office under § 11.16(d).

* * * *

Roster or register means a list of individuals who have been registered as either a patent attorney or patent agent.

* * * *

Serious crime means:

- (1) Any criminal offense classified as a felony under the laws of the United States, any state or any foreign country where the crime occurred, or any

criminal offense punishable by death or imprisonment of more than one year; or

(2) Any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the crime occurred, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”

* * * *

State means any of the 50 states of the United States of America, the District of Columbia, and any commonwealth or territory of the United States of America.

* * * *

■ 5. Amend § 11.2 by revising paragraphs (b)(2) and (4) to read as follows:

§ 11.2 Director of the Office of Enrollment and Discipline.

* * * *

(b) * * *

(2) Receive and act upon applications for registration, prepare and grade the registration examination, maintain the register provided for in § 11.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

* * * *

(4) Conduct investigations of matters involving possible grounds for discipline. Except in matters meriting summary dismissal, no disposition under § 11.22(h) shall be recommended or undertaken by the OED Director until the subject of the investigation has been afforded an opportunity to respond to a reasonable inquiry by the OED Director.

* * * *

■ 6. Transfer § 11.4 from subpart B to subpart A and revise to read as follows:

§ 11.4 Computing time.

Computing time. The following rules apply in computing any time period specified in this part where the period is stated in days or a longer unit of time:

- (a) Exclude the day of the event that triggers the period;
- (b) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (c) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

■ 7. Amend § 11.5 by revising paragraphs (a), (b)(1) introductory text, and (b)(2) to read as follows:

§ 11.5 Register of attorneys and agents in patent matters; practice before the Office.

(a) *Register of attorneys and agents.* A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants having prospective or immediate business before the Office in the preparation and prosecution of patent applications. Registration in the Office under the provisions of this part shall entitle the individuals so registered to practice before the Office only in patent matters.

(b) * * *

(1) *Practice before the Office in patent matters.* Practice before the Office in patent matters includes, but is not limited to, preparing or prosecuting any patent application; consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office; drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application; and drafting a communication for a public use, interference, reexamination proceeding, petition, appeal to or any other proceeding before the Patent Trial and Appeal Board, or other patent proceeding. Registration to practice before the Office in patent matters authorizes the performance of those services that are reasonably necessary and incident to the preparation and prosecution of patent applications or other proceeding before the Office involving a patent application or patent in which the practitioner is authorized to participate. The services include:

* * * *

(2) *Practice before the Office in trademark matters.* Practice before the Office in trademark matters includes, but is not limited to, consulting with or giving advice to a client in contemplation of filing a trademark application or other document with the Office; preparing or prosecuting an application for trademark registration; preparing an amendment that may require written argument to establish the registrability of the mark; preparing or prosecuting a document for maintaining, correcting, amending, canceling, surrendering, or otherwise affecting a registration; and conducting an opposition, cancellation, or

concurrent use proceeding; or conducting an appeal to the Trademark Trial and Appeal Board.

■ 8. Amend § 11.7 by revising paragraphs (b)(1)(i)(B) and (b)(2) and (3); adding paragraph (b)(4); revising paragraphs (d)(3), (e), (f), (g)(1), and (g)(2)(ii); and adding paragraph (l) to read as follows:

§ 11.7 Requirements for registration.

* * * * *

(b)(1) * * *

(i) * * *

(B) Payment of the fees required by § 1.21(a)(1) of this chapter;

* * * * *

(2) An individual failing the examination may, upon receipt of notice of failure from OED, reapply for admission to the examination. An individual failing the examination for the first or second time must wait 30 days after the date the individual last took the examination before retaking the examination. An individual failing the examination for the third or fourth time must wait 90 days after the date the individual last took the examination before retaking the examination. An individual may not take the examination more than five times. However, upon petition under § 11.2(c), the OED Director may, at his or her discretion, waive this limitation upon such conditions as the OED Director may prescribe. An individual reapplying shall:

(i) File a completed application for registration form including all requested information and supporting documents not previously provided to OED,

(ii) Pay the fees required by § 1.21(a)(1) of this chapter,

(iii) For aliens, provide proof that registration is not inconsistent with the terms of their visa or entry into the United States, and

(iv) Provide satisfactory proof of good moral character and reputation.

(3) An individual failing to file a complete application for registration will not be admitted to the examination and will be notified of the incompleteness. Applications for registration that are incomplete as originally submitted will be considered only when they have been completed and received by OED, provided that this occurs within 60 days of the mailing date of the notice of incompleteness.

Thereafter, a new and complete application for registration must be filed. Only an individual approved as satisfying the requirements of paragraph (b)(1)(i) of this section may be admitted to the examination.

(4)(i) A notice of admission shall be sent to those individuals who have been

admitted to the registration examination. This notice shall specify a certain period of time in which to schedule and take the examination.

(ii) An individual may request an extension of this period of time by written request to the OED Director. Such request must be received by the OED Director prior to the expiration of the period specified in the notice as extended by any previously granted extension and must include the fee specified in § 1.21(a)(1)(iv). Upon the granting of the request, the period of time in which the individual may schedule and take the registration examination shall be extended by 90 days.

(iii) An individual who does not take the registration examination within the period of time specified in the notice may not take the examination without filing a new application for registration, as set forth in paragraph (b)(1)(i) of this section.

* * * * *

(d) * * *

* * * * *

(3) *Certain former Office employees who were not serving in the patent examining corps upon their separation from the Office.* The OED Director may waive the taking of a registration examination in the case of a former Office employee meeting the requirements of paragraph (b)(1)(i)(C) of this section who, by petition, demonstrates the necessary legal qualifications to render to patent applicants and others valuable service and assistance in the preparation and prosecution of their applications or other business before the Office by showing that he or she has:

(i) Exhibited comprehensive knowledge of patent law equivalent to that shown by passing the registration examination as a result of having been in a position of responsibility in the Office in which he or she:

(A) Provided substantial guidance on patent examination policy, including the development of rule or procedure changes, patent examination guidelines, changes to the Manual of Patent Examining Procedure, training or testing materials for the patent examining corps, or materials for the registration examination or continuing legal education; or

(B) Represented the Office in patent matters before Federal courts; and

(ii) Was rated at least fully successful in each quality performance element of his or her performance plan for said position for the last two complete rating periods in the Office and was not under an oral or written warning regarding

such performance elements at the time of separation from the Office.

* * * * *

(e) *Examination results.* Notification of the examination results is final. Within 60 days of the mailing date of a notice of failure, the individual is entitled to inspect, but not copy, the questions and answers he or she incorrectly answered. Review will be under supervision. No notes may be taken during such review. Substantive review of the answers or questions may not be pursued by petition for regrade.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under § 11.6(c), in addition to satisfying the provisions of paragraphs (a) and (b) of this section, and the provisions of § 11.8(b), shall pay the application fee required by § 1.21(a)(1)(i) of this chapter upon filing an application for registration.

(g) * * *

(1) Every individual seeking recognition shall answer all questions in the application for registration and request(s) for information and evidence issued by OED; disclose all relevant facts, dates, and information; and provide verified copies of documents relevant to his or her good moral character and reputation. An individual who is an attorney shall submit a certified copy of each of his or her State bar applications and determinations of character and reputation, if available.

(2) * * *

(ii) The OED Director, in considering an application for registration by an attorney, may accept a State bar's determination of character and reputation as meeting the requirements set forth in paragraph (a)(2)(i) of this section if, after review, the Office finds no substantial discrepancy between the information provided with his or her application for registration and the State bar application and determination of character and reputation, provided that acceptance is not inconsistent with other rules and the requirements of 35 U.S.C. 2(b)(2)(D).

* * * * *

(l) *Transfer of status from agent to attorney.* An agent registered under § 11.6(b) may request registration as an attorney under § 11.6(a). The agent shall demonstrate his or her good standing as an attorney and pay the fee required by § 1.21(a)(2)(iii) of this chapter.

■ 9. Amend § 11.9 by revising paragraphs (a) and (b) and adding paragraphs (d), (e), and (f), to read as follows:

§ 11.9 Limited recognition in patent matters.

(a) Any individual not registered under § 11.6 may, upon a showing of circumstances that render it necessary or justifiable and that the individual is of good moral character and reputation, be given limited recognition by the OED Director to prosecute as attorney or agent a specified patent application or specified patent applications. Limited recognition under this paragraph shall not extend further than the application or applications specified. Limited recognition shall not be granted to individuals who have passed the examination or to those for whom the examination has been waived while such individual's application for registration to practice before the Office in patent matters is pending.

(b) A nonimmigrant alien residing in the United States and fulfilling the provisions of paragraphs (d) and (e) of this section may be granted limited recognition if the nonimmigrant alien is authorized by the United States Government to be employed or trained in the United States in the capacity of representing a patent applicant by presenting or prosecuting a patent application. Limited recognition shall be granted for a period consistent with the terms of authorized employment or training. Limited recognition shall not be granted or extended to a non-United States citizen residing abroad. If granted, limited recognition shall automatically expire upon the nonimmigrant alien's departure from the United States.

* * * * *

(d) No individual will be granted limited recognition to practice before the Office under paragraph (b) of this section unless he or she has:

(1) Applied to the USPTO Director in writing by completing an application form supplied by the OED Director and furnishing all requested information and material; and

(2) Established to the satisfaction of the OED Director that he or she:

(i) Possesses good moral character and reputation;

(ii) Possesses the legal, scientific, and technical qualifications necessary for him or her to render applicants valuable service; and

(iii) Is competent to advise and assist patent applicants in the presentation and prosecution of their applications before the Office.

(e)(1) To enable the OED Director to determine whether an individual has the qualifications specified in paragraph (d)(2) of this section, the individual shall:

(i) File a complete application for limited recognition each time admission to the registration examination is requested. A complete application for limited recognition includes:

(A) An application for limited recognition form supplied by the OED Director wherein all requested information and supporting documents are furnished;

(B) Payment of the fees required by § 1.21(a)(1) of this chapter;

(C) Satisfactory proof of scientific and technical qualifications; and

(D) Satisfactory proof that the terms of the individual's immigration status or entry into the United States authorize employment or training in the preparation and prosecution of patents for others; and

(ii) Pass the registration examination. Each individual seeking limited recognition under this section must take and pass the registration examination to enable the OED Director to determine whether the individual possesses the legal and competence qualifications specified in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section.

(2) An individual failing the examination may, upon receipt of notice of failure from OED, reapply for admission to the examination. An individual failing the examination for the first or second time must wait 30 days after the date the individual last took the examination before retaking the examination. An individual failing the examination for the third or fourth time must wait 90 days after the date the individual last took the examination before retaking the examination. An individual may not take the examination more than five times.

However, upon petition under § 11.2(c), the OED Director may, at his or her discretion, waive this limitation upon such conditions as the OED Director may prescribe. An individual reapplying shall:

(i) File a complete application for limited recognition form, including all requested information and supporting documents not previously provided to OED;

(ii) Pay the application fee required by § 1.21(a)(1) of this chapter;

(iii) Provide satisfactory proof that the terms of the individual's immigration status or entry into the United States authorize employment or training in the preparation and prosecution of patents for others; and

(iv) Provide satisfactory proof of good moral character and reputation.

(3) An individual failing to file a complete application will not be admitted to the examination and will be notified of such deficiency.

Applications for limited recognition that are incomplete will be considered only when the deficiency has been cured, provided that this occurs within 60 days of the mailing date of the notice of deficiency. Thereafter, a new and complete application for limited recognition must be filed. An individual seeking limited recognition under paragraph (b) of this section must satisfy the requirements of paragraph (e)(1)(i) of this section to be admitted to the examination.

(4)(i) A notice of admission shall be sent to those individuals who have been admitted to the registration examination. This notice shall specify a certain period of time in which to schedule and take the examination.

(ii) An individual may request an extension of this period of time by written request to the OED Director. Such request must be received by the OED Director prior to the expiration of the period specified in the notice, as extended by any previously granted extension, and must include the fee specified in § 1.21(a)(1)(iv). Upon the granting of the request, the period of time in which the individual may schedule and take the examination shall be extended by 90 days.

(iii) An individual who does not take the examination within the period of time specified in the notice may not take the examination without filing a new application for limited recognition as set forth in paragraph (e)(1)(i) of this section.

(f) *Applications for reinstatement of limited recognition.* (1) A person whose grant of limited recognition expired less than five years before the application for reinstatement may be reinstated provided the person:

(i) Files a complete application that includes:

(A) A request for reinstatement with the fee required by § 1.21(a)(9)(ii); and

(B) Satisfactory proof that the terms of the individual's immigration status or entry into the United States authorize employment or training in the preparation and prosecution of patents for others; and

(ii) Provides satisfactory proof of good moral character and reputation.

(2) Persons whose grant of limited recognition expired five years or more before filing a complete application for reinstatement must comply with paragraph (f)(1) of this section and provide objective evidence that they continue to possess the necessary legal qualifications to render applicants valuable service to patent applicants.

■ 10. Revise § 11.10 to read as follows:

§ 11.10 Restrictions on practice in patent matters; former and current Office employees; government employees.

(a) Only practitioners registered under § 11.6; individuals given limited recognition under § 11.9(a) or (b) or § 11.16; or individuals admitted *pro hac vice* as provided in § 41.5(a) or 42.10(c) of this chapter are permitted to represent others before the Office in patent matters.

(b) *Post employment agreement of former Office employee.* No individual who has served in the patent examining corps or elsewhere in the Office may practice before the Office after termination of his or her service, unless he or she signs a written undertaking agreeing:

(1) To not knowingly act as agent or attorney for or otherwise represent any other person:

- (i) Before the Office,
- (ii) In connection with any particular patent or patent application,
- (iii) In which said employee participated personally and substantially as an employee of the Office; and

(2) To not knowingly act within two years after terminating employment by the Office as agent or attorney for, or otherwise represent any other person:

- (i) Before the Office,
- (ii) In connection with any particular patent or patent application,
- (iii) If such patent or patent application was pending under the employee's official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

■ 11. Revise § 11.11 to read as follows:

§ 11.11 Administrative suspension, inactivation, resignation, reinstatement, and revocation.

(a) *Contact information.* (1) A registered practitioner, or person granted limited recognition under § 11.9(b), must notify the OED Director of the postal address for their office, at least one and up to three email addresses where they receive email, and a business telephone number, as well as every change to each of said addresses and telephone number within thirty days of the date of the change. A registered practitioner, or person granted limited recognition under § 11.9(b), shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file written notice of the change of address or telephone number with the OED Director. A registered practitioner, or person granted limited recognition under § 11.9(b), who is an attorney in

good standing with the bar of the highest court of one or more states shall provide the OED Director with the identification number associated with each bar membership. The OED Director shall publish a list containing the name, postal business addresses, business telephone number, registration number or limited recognition number, and registration status as an attorney or agent of each registered practitioner, or person granted limited recognition under § 11.9(b), recognized to practice before the Office in patent matters. The OED Director may also publish the continuing legal education certification status of each registered practitioner, or person granted limited recognition under § 11.9(b).

(2) Biennially, registered practitioners and persons granted limited recognition may be required to file a registration statement with the OED Director for the purpose of ascertaining whether such practitioner desires to remain in an active status. Any registered practitioner, or person granted limited recognition under § 11.9(b), failing to file the registration statement or give any information requested by the OED Director within a time limit specified shall be subject to administrative suspension under paragraph (b) of this section.

(3)(i) A registered practitioner, or person granted limited recognition under § 11.9(b), who has completed, in the past 24 months, five hours of continuing legal education credits in patent law and practice and one hour of continuing legal education credit in ethics, may certify such completion to the OED Director.

(ii) A registered practitioner, or person granted limited recognition under § 11.9(b), may earn up to two of the five hours of continuing legal education credit in patent law and practice by providing patent *pro bono* legal services through the USPTO Patent Pro Bono Program. One hour of continuing legal education credit in patent law and practice may be earned for every three hours of patent *pro bono* legal service.

(b) *Administrative suspension.* (1) Whenever it appears that a registered practitioner, or person granted limited recognition under § 11.9(b), has failed to comply with paragraph (a)(2) of this section, the OED Director shall publish and send a notice to the registered practitioner, or person granted limited recognition, advising of the noncompliance, the consequence of being administratively suspended set forth in paragraph (b)(6) of this section if noncompliance is not timely remedied, and the requirements for

reinstatement under paragraph (f) of this section. The notice shall be published and sent to the registered practitioner, or person granted limited recognition, by mail to the last postal address furnished under paragraph (a) of this section or by email addressed to the last email address furnished under paragraph (a) of this section. The notice shall demand compliance and payment of a delinquency fee set forth in § 1.21(a)(9)(i) of this chapter within 60 days after the date of such notice.

(2) In the event a practitioner fails to comply with the requirements specified in a notice provided pursuant to paragraph (b)(1) of this section within the time allowed, the OED Director shall publish and send to the practitioner a notice to show cause why the practitioner should not be administratively suspended. Such notice shall be sent in the same manner as set forth in paragraph (b)(1) of this section. The OED Director shall file a copy of the notice to show cause with the USPTO Director.

(3) A practitioner to whom a notice to show cause under this section has been issued shall be allowed 30 days from the date of the notice to show cause to file a response with the USPTO Director. The response should address any factual and legal bases why the practitioner should not be administratively suspended. The practitioner shall serve the OED Director with a copy of the response at the time it is filed with the USPTO Director. Within 10 days of receiving a copy of the response, the OED Director may file a reply with the USPTO Director. A copy of the reply by the OED Director shall be sent to the practitioner at the practitioner's address of record. If the USPTO Director determines that there are no genuine issues of material fact regarding the Office's compliance with the notice requirements under this section or the failure of the practitioner to pay the requisite fees, the USPTO Director shall enter an order administratively suspending the practitioner. Otherwise, the USPTO Director shall enter an appropriate order dismissing the notice to show cause. Any request for reconsideration of the USPTO Director's decision must be filed within 20 days after the date such decision is rendered by the USPTO Director. Nothing herein shall permit an administratively suspended practitioner to seek a stay of the suspension during the pendency of any review of the USPTO Director's final decision. If, prior to the USPTO Director entering an order under this section, the OED Director determines that a practitioner has complied with requirements specified in the notice to

show cause, the OED Director may withdraw the notice to show cause, and the practitioner will not be administratively suspended.

(4) [Reserved]

(5) A practitioner is subject to investigation and discipline for his or her conduct prior to, during, or after the period he or she was administratively suspended.

(6) A practitioner is prohibited from practicing before the Office in patent matters while administratively suspended. A practitioner who knows he or she has been administratively suspended is subject to discipline for failing to comply with the provisions of this paragraph and shall comply with the provisions of § 11.116.

(7) An administratively suspended practitioner may request reinstatement by complying with paragraph (f)(1) of this section.

(c) *Administrative inactivation.* (1) Any registered practitioner who shall become employed by the Office shall comply with § 11.116 for withdrawal from all patent, trademark, and other non-patent matters wherein he or she represents an applicant or other person, and notify the OED Director in writing of said employment on the first day of said employment. The name of any registered practitioner employed by the Office shall be endorsed on the register as administratively inactive. Upon separation from the Office, an administratively inactive practitioner may request reactivation by complying with paragraph (f)(2) of this section.

(2) Any registered practitioner who is a judge of a court of record, full-time court commissioner, U.S. bankruptcy judge, U.S. magistrate judge, or a retired judge who is eligible for temporary judicial assignment and is not engaged in the practice of law may request, in writing, that his or her name be endorsed on the register as administratively inactive. Upon acceptance of the request, the OED Director shall endorse the name of the practitioner as administratively inactive. Following separation from the bench, the practitioner may request reactivation by complying with paragraph (f)(2) of this section.

(3) An administratively inactive practitioner remains subject to the provisions of the USPTO Rules of Professional Conduct and to proceedings and sanctions under §§ 11.19 through 11.58 for conduct that violates a provision of the USPTO Rules of Professional Conduct prior to or during such administrative inactivity.

(d) *Voluntary inactivation.* (1) Any registered practitioner may voluntarily enter inactive status by filing a request,

in writing, that his or her name be endorsed on the roster as voluntarily inactive. Upon acceptance of the request, the OED Director shall endorse the name as voluntarily inactive.

(2) [Reserved]

(3) A registered practitioner who seeks or enters into voluntary inactive status is subject to investigation and discipline for his or her conduct prior to, during, or after the period of his or her inactivation.

(4) [Reserved]

(5) A registered practitioner in voluntary inactive status is prohibited from practicing before the Office in patent cases while in voluntary inactive status. A registered practitioner in voluntary inactive status will be subject to discipline for failing to comply with the provisions of this paragraph. Upon acceptance of the request for voluntary inactive status, the practitioner must comply with the provisions of § 11.116.

(6) Any registered practitioner whose name has been endorsed as voluntarily inactive pursuant to paragraph (d)(1) of this section and is not under investigation and not subject to a disciplinary proceeding may be restored to active status on the register as may be appropriate, provided that the practitioner files a written request for restoration, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, including information and material pertaining to the practitioner's moral character and reputation under § 11.7(a)(2)(i) during the period of inactivation, a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office, and pays the fees set forth in § 1.21(a)(7)(iii) and (iv) of this subchapter.

(e) *Resignation.* A registered practitioner or a practitioner recognized under § 11.14(c) may request to resign by notifying the OED Director in writing of such intent, unless such practitioner is under investigation under § 11.22 for a possible violation of the USPTO Rules of Professional Conduct, is a practitioner against whom probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), or is a respondent in a pending proceeding instituted under § 11.24, § 11.25, or § 11.29. Upon acceptance in writing by the OED Director of such request, that practitioner shall no longer be eligible to practice before the Office in patent matters but shall continue to file a change of address for five years thereafter in order that he or she may be located in the event information

regarding the practitioner's conduct comes to the attention of the OED Director or any grievance is made about his or her conduct while he or she engaged in practice before the Office. The name of any practitioner whose resignation is accepted shall be endorsed as resigned, and notice thereof published in the Official Gazette. Upon acceptance of the resignation by the OED Director, the practitioner must comply with the provisions of § 11.116. A practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her resignation.

(f) *Administrative reinstatement.* (1)(i) Any administratively suspended registered practitioner, or person granted limited recognition under § 11.9(b), may be reinstated provided the practitioner:

(A) Is not the subject of a disciplinary investigation or a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED Director;

(C) Has demonstrated good moral character and reputation and competence in advising and assisting patent applicants in the presentation and prosecution of their applications before the Office;

(D) Has submitted a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Has paid the fees set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Has paid all applicable delinquency fees as set forth in § 1.21(a)(9)(i) of this chapter.

(ii) Any administratively suspended registered practitioner, or person granted limited recognition, who applies for reinstatement more than five years after the effective date of the administrative suspension, additionally shall be required to file a petition to the OED Director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

(2)(i) A practitioner who has been administratively inactivated pursuant to paragraph (c) of this section may be reactivated after his or her employment with the Office ceases or his or her employment in a judicial capacity ceases, provided the following is filed with the OED Director:

(A) A completed application for reactivation on a form supplied by the OED Director;

(B) A data sheet;

(C) A signed written undertaking required by § 11.10(b); and

(D) The fee set forth in § 1.21(a)(9)(ii) of this chapter.

(ii) Administratively inactive practitioners who have been separated from the Office or have ceased to be employed in a judicial capacity for five or more years prior to filing a complete application for reactivation shall be required to provide objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

(3)(i) Any registered practitioner who has been endorsed as resigned pursuant to paragraph (e) of this section may be reinstated on the register provided the practitioner:

(A) Is not the subject of a disciplinary investigation or a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED Director;

(C) Has demonstrated good moral character and reputation and competence in advising and assisting patent applicants in the presentation and prosecution of their applications before the Office;

(D) Has submitted a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Has paid the fees set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Has paid all applicable delinquency fees as set forth in § 1.21(a)(9)(i) of this chapter.

(ii) Any resigned registered practitioner who applies for reinstatement more than five years after the effective date of the resignation additionally shall be required to file a petition to the OED Director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

(g) *Administrative revocation.* (1) The USPTO Director may revoke an individual's registration or limited recognition if:

(i) The registration or limited recognition was issued through mistake or inadvertence, or

(ii) The individual's application for registration or limited recognition contains materially false information or omits material information.

(2) Whenever it appears that grounds for administrative revocation exist, the OED Director shall issue to the individual a notice to show cause why the individual's registration or limited recognition should not be revoked.

(i) The notice to show cause shall be served on the individual in the same manner as described in § 11.35.

(ii) The notice to show cause shall state the grounds for the proposed revocation.

(iii) The OED Director shall file a copy of the notice to show cause with the USPTO Director.

(3) Within 30 days after service of the notice to show cause, the individual may file a response to the notice to show cause with the USPTO Director. The response should address any factual or legal bases why the individual's registration or limited recognition should not be revoked. The individual shall serve the OED Director with a copy of the response at the time it is filed with the USPTO Director. Within 10 days of receiving a copy of the response, the OED Director may file a reply with the USPTO Director. A copy of the reply by the OED Director shall be sent to the individual at the individual's address of record.

(4) If the USPTO Director determines that there are no genuine issues of material fact regarding the Office's compliance with the notice requirements under this section or the grounds for the notice to show cause, the USPTO Director shall enter an order revoking the individual's registration or limited recognition. Otherwise, the USPTO Director shall enter an appropriate order dismissing the notice to show cause. An oral hearing will not be granted unless so ordered by the USPTO Director, upon a finding that such hearing is necessary. Any request for reconsideration of the USPTO Director's decision must be filed within 20 days after the date such decision is rendered by the USPTO Director. Nothing herein shall permit an individual to seek a stay of the revocation during the pendency of any review of the USPTO Director's final decision.

■ 12. Amend § 11.18 by revising paragraph (c)(2) to read as follows:

§ 11.18 Signature and certificate for correspondence filed in the Office.

* * * * *

(c) * * *

(2) Referring a practitioner's conduct to the Director of the Office of Enrollment and Discipline for appropriate action;

* * * * *

■ 13. Amend § 11.19 by revising the section heading and paragraphs (a), (b)(1)(ii), and (c), and adding paragraph (e), to read as follows:

§ 11.19 Disciplinary jurisdiction; grounds for discipline and for transfer to disability inactive status.

(a) *Disciplinary jurisdiction.* All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11; all practitioners registered or recognized to practice before the Office in patent matters; all practitioners resigned, inactivated, or in emeritus status under § 11.11; all practitioners authorized under § 41.5(a) or 42.10(c) of this chapter; and all practitioners transferred to disability inactive status or publicly disciplined by a duly constituted authority are subject to the disciplinary jurisdiction of the Office and subject to being transferred to disability inactive status. A non-practitioner is also subject to the disciplinary authority of the Office if the person engages in or offers to engage in practice before the Office without proper authority.

(b) * * *

(1) * * *

(ii) Discipline on ethical or professional misconduct grounds imposed in another jurisdiction or disciplinary disqualification from participating in or appearing before any Federal program or agency;

* * * * *

(c) Petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office are not governed by this subpart and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

* * * * *

(e) The OED Director has the discretion to choose any of the independent grounds of discipline under paragraph (b) of this section and to pursue any of the procedures set forth in this subpart in every disciplinary proceeding.

■ 14. Amend § 11.20 by revising paragraphs (a)(4) and (c) to read as follows:

§ 11.20 Disciplinary sanctions; Transfer to disability inactive status.

(a) * * *

(4) *Probation.* Probation may be imposed in lieu of or in addition to any other disciplinary sanction. The conditions of probation shall be stated in the order imposing probation. Violation of any condition of probation shall be cause for imposition of the disciplinary sanction. Imposition of the disciplinary sanction predicated upon violation of probation shall occur only after a notice to show cause why the disciplinary sanction should not be

imposed is resolved adversely to the practitioner.

* * * * *

(c) *Transfer to disability inactive status.* As set forth in § 11.29, the USPTO Director, after notice and opportunity for a hearing, may transfer a practitioner to disability inactive status where grounds exist to believe the practitioner has been transferred to disability inactive status in another jurisdiction, has been judicially declared incompetent, has been judicially ordered to be involuntarily committed after a hearing on the grounds of incompetency or disability, or has been placed by court order under guardianship or conservatorship.

■ 15. Revise § 11.21 to read as follows:

§ 11.21 Warnings.

A warning is neither public nor a disciplinary sanction. The OED Director may conclude an investigation with the issuance of a warning. The warning shall contain a statement of facts and identify the USPTO Rules of Professional Conduct relevant to the facts.

■ 16. Amend § 11.22 by adding paragraph (c) and by revising paragraphs (g) and (h) to read as follows:

§ 11.22 Disciplinary investigations.

* * * * *

(c) *Notice to the OED Director.* Upon receiving the notification required by § 11.24(a), 11.25(a), or 11.29(a), the OED Director shall obtain a certified copy of the record or order regarding such discipline, disqualification, conviction, or transfer. A certified copy of the record or order regarding the discipline, disqualification, conviction, or transfer shall be clear and convincing evidence that the practitioner has been disciplined, disqualified, convicted of a crime, or transferred to disability status by another jurisdiction.

* * * * *

(g) Where the OED Director makes a request under paragraph (f)(2) of this section to a Contact Member of the Committee on Discipline, such Contact Member shall not, with respect to the practitioner connected to the OED Director's request, participate in the Committee on Discipline panel that renders a probable cause determination under § 11.23(b) concerning such practitioner.

(h) *Disposition of investigation.* Upon the conclusion of an investigation, the OED Director may take appropriate action, including but not limited to:

(1) Closing the investigation without issuing a warning or taking disciplinary action;

(2) Issuing a warning to the practitioner;

(3) Instituting formal charges upon the approval of the Committee on Discipline; or

(4) Entering into a settlement agreement with the practitioner and submitting the same for approval of the USPTO Director.

* * * * *

■ 17. Amend § 11.24 by revising paragraphs (a), (b) introductory text, (d)(1) introductory text, and (e) to read as follows:

§ 11.24 Reciprocal discipline.

(a) *Notice to the OED Director.* Within 30 days of being publicly censured, publicly reprimanded, subjected to probation, disbarred or suspended by another jurisdiction, or disciplinarily disqualified from participating in or appearing before any Federal program or agency, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same. A practitioner is deemed to be disbarred if he or she is disbarred, is excluded on consent, or has resigned in lieu of discipline or a disciplinary proceeding. Upon receiving notification from any source or otherwise learning that a practitioner subject to the disciplinary jurisdiction of the Office has been publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified, the OED Director shall obtain a certified copy of the record or order regarding the public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification. A certified copy of the record or order regarding the discipline shall establish a prima facie case by clear and convincing evidence that the practitioner has been publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified by another jurisdiction. In addition to the actions identified in § 11.22(h) and (i), the OED Director may, without Committee on Discipline authorization, file with the USPTO Director a complaint complying with § 11.34 against the practitioner predicated upon the public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification. The OED Director may request the USPTO Director to issue a notice and order as set forth in paragraph (b) of this section.

(b) *Notification served on practitioner.* Upon receipt of the complaint and request for notice and order, the USPTO Director shall issue a notice directed to the practitioner in accordance with

§ 11.35 and to the OED Director containing:

* * * * *

(d) * * * * *
(1) The USPTO Director shall hear the matter on the documentary record unless the USPTO Director determines that an oral hearing is necessary. The USPTO Director may order the OED Director or the practitioner to supplement the record with further information or argument. After expiration of the period specified in paragraph (b)(3) of this section, the USPTO Director shall consider the record and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner demonstrates by clear and convincing evidence, and the USPTO Director finds there is a genuine issue of material fact that:

* * * * *

(e) *Adjudication in another jurisdiction or Federal agency or program.* In all other respects, a final adjudication, regardless of the evidentiary standard, in another jurisdiction or Federal agency or program that a practitioner, whether or not admitted in that jurisdiction, has committed misconduct shall establish a prima facie case by clear and convincing evidence that the practitioner has engaged in misconduct under § 11.804(h).

* * * * *

■ 18. Amend § 11.25 by revising paragraphs (a), (b)(2) introductory text, (b)(3), and (e)(2) to read as follows:

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.

(a) *Notice to the OED Director.* Upon being convicted of a crime in a court of the United States, any State, or a foreign country, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same within 30 days from the date of such conviction. Notwithstanding the preceding sentence, a practitioner is not required to notify the OED Director of a traffic offense that did not involve the use of alcohol or a controlled substance, did not result in a fine in excess of \$300, and did not result in the imposition of any other punishment. Upon being advised or learning that a practitioner subject to the disciplinary jurisdiction of the Office has been convicted of a crime, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting interim suspension. If the

crime is a serious crime, the OED Director may file with the USPTO Director proof of the conviction and request the USPTO Director to issue a notice and order set forth in paragraph (b)(2) of this section. The OED Director may, in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint complying with § 11.34 against the practitioner predicated upon the conviction of a serious crime. If the crime is not a serious crime, the OED Director may process the matter in the same manner as any other information or evidence of a possible violation of any USPTO Rule of Professional Conduct coming to the attention of the OED Director.

(b) * * *

(2) *Notification served on practitioner.* Upon receipt of a certified copy of the court record, docket entry, or judgment demonstrating that the practitioner has been so convicted, together with the complaint, the USPTO Director shall issue a notice directed to the practitioner in accordance with § 11.35, and to the OED Director, containing:

* * * * *

(3) *Hearing and final order on request for interim suspension.* The request for interim suspension shall be heard by the USPTO Director on the documentary record unless the USPTO Director determines that the practitioner's response establishes by clear and convincing evidence a genuine issue of material fact that: The crime did not constitute a serious crime, the practitioner is not the person who committed the crime, or the conviction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. The USPTO Director may order the OED Director or the practitioner to supplement the record with further information or argument. If the USPTO Director determines that there is no genuine issue of material fact, the USPTO Director shall enter an appropriate final order regarding the OED Director's request for interim suspension regardless of the pendency of any criminal appeal. If the USPTO Director is unable to make such determination because there is a genuine issue of material fact, the USPTO Director shall enter a final order dismissing the request and enter a further order referring the complaint to a hearing officer for a hearing and entry of an initial decision in accordance with the other rules in this part and directing the practitioner to file an answer to the complaint in accordance with § 11.36.

* * * * *

(e) * * *

(2) *Following conviction of a serious crime.* Any practitioner convicted of a serious crime and disciplined in whole or in part in regard to that conviction, may petition for reinstatement under the conditions set forth in § 11.60 no earlier than after completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

* * * * *

■ 19. Amend § 11.27 by revising paragraph (b) and by removing and reserving paragraph (c) to read as follows:

§ 11.27 Exclusion on consent.

* * * * *

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. The USPTO Director may order the OED Director or the practitioner to supplement the record with further information or argument. The OED Director may also file comments in response to the affidavit. If the affidavit is approved, the USPTO Director will enter an order excluding the practitioner on consent and providing other appropriate actions. Upon entry of the order, the excluded practitioner shall comply with the requirements set forth in § 11.58.

(c) [Reserved]

* * * * *

■ 20. Amend § 11.28 by revising paragraphs (a)(1) introductory text, (a)(1)(i)(D) and (E), and (a)(2) to read as follows:

§ 11.28 Incapacitated practitioners in a disciplinary proceeding.

(a) * * * (1) *Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, the practitioner may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding.

(i) * * *

(D) Written consent by the practitioner to be transferred to disability inactive status if the motion is granted; and

(E) Written agreement by the practitioner not to practice before the Office in patent, trademark, or other non-patent matters while in disability inactive status.

* * * * *

(2) *Disposition of practitioner's motion.* The hearing officer shall decide

the motion and any response thereto. The motion shall be granted upon a showing of good cause to believe the practitioner to be incapacitated as alleged. If the required showing is made, the hearing officer shall enter an order holding the disciplinary proceeding in abeyance. In the case of addiction to drugs or intoxicants, the order may provide that the practitioner will not be returned to active status absent satisfaction of specified conditions. Upon receipt of the order, the OED Director shall transfer the practitioner to disability inactive status, give notice to the practitioner, cause notice to be published, and give notice to appropriate authorities in the Office that the practitioner has been placed in disability inactive status. The practitioner shall comply with the provisions of § 11.58 and shall not engage in practice before the Office in patent, trademark, and other non-patent law until a determination is made of the practitioner's capability to resume practice before the Office in a proceeding under paragraph (c) or (d) of this section. A practitioner in disability inactive status must obtain permission from the OED Director to engage in paralegal activity permitted under § 11.58(h). Permission will be granted only if the practitioner has complied with all the conditions of § 11.58 applicable to disability inactive status. In the event that permission is granted, the practitioner shall fully comply with the provisions of § 11.58(h).

* * * * *

■ 21. Amend § 11.29 by revising paragraphs (a), (b), (d), (g), and (i) to read as follows:

§ 11.29 Reciprocal transfer or initial transfer to disability inactive status.

(a) *Notice to the OED Director—(1) Transfer to disability inactive status in another jurisdiction as grounds for reciprocal transfer by the Office.* Within 30 days of being transferred to disability inactive status in another jurisdiction, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the transfer. Upon notification from any source that a practitioner subject to the disciplinary jurisdiction of the Office has been transferred to disability inactive status in another jurisdiction, the OED Director shall obtain a certified copy of the order. If the OED Director finds that transfer to disability inactive status is appropriate, the OED Director shall file with the USPTO Director:

(i) The order;

(ii) A request that the practitioner be transferred to disability inactive status,

including the specific grounds therefor; and

(iii) A request that the USPTO Director issue a notice and order as set forth in paragraph (b) of this section.

(2) *Involuntary commitment, adjudication of incompetency, or court ordered placement under guardianship or conservatorship as grounds for initial transfer to disability inactive status.* Within 30 days of being judicially declared incompetent, judicially ordered to be involuntarily committed after a hearing on the grounds of incompetency or disability, or placed by court order under guardianship or conservatorship in another jurisdiction, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of such judicial action. Upon notification from any source that a practitioner subject to the disciplinary jurisdiction of the Office has been subject to such judicial action, the OED Director shall obtain a certified copy of the order. If the OED Director finds that transfer to disability inactive status is appropriate, the OED Director shall file with the USPTO Director:

(i) The order;

(ii) A request that the practitioner be transferred to disability inactive status, including the specific grounds therefor; and

(iii) A request that the USPTO Director issue a notice and order as set forth in paragraph (b) of this section.

(b) *Notice served on practitioner.* Upon receipt of a certified copy of an order or declaration issued by another jurisdiction demonstrating that a practitioner subject to the disciplinary jurisdiction of the Office has been transferred to disability inactive status, judicially declared incompetent, judicially ordered to be involuntarily committed after a judicial hearing on the grounds of incompetency or disability, or placed by court order under guardianship or conservatorship, together with the OED Director's request, the USPTO Director shall issue a notice, comporting with § 11.35, directed to the practitioner containing:

(1) A copy of the order or declaration from the other jurisdiction;

(2) A copy of the OED Director's request; and

(3) An order directing the practitioner to file a response with the USPTO Director and the OED Director, within 40 days from the date of the notice, establishing by clear and convincing evidence a genuine issue of material fact supported by an affidavit and predicated upon the grounds set forth in paragraphs (d)(1)(i) through (d)(1)(iv) of this section that a transfer to disability

inactive status would be unwarranted and the reasons therefor.

* * * * *

(d) *Transfer to disability inactive status.* (1) The request for transfer to disability inactive status shall be heard by the USPTO Director on the documentary record unless the USPTO Director determines that there is a genuine issue of material fact, in which case the USPTO Director may deny the request. The USPTO Director may order the OED Director or the practitioner to supplement the record with further information or argument. After expiration of the period specified in paragraph (b)(3) of this section, and after completion of any supplemental hearings, the USPTO Director shall consider any timely filed response and impose the identical transfer to disability inactive status based on the practitioner's transfer to disability status in another jurisdiction or shall transfer the practitioner to disability inactive status based on judicially declared incompetency, judicially ordered involuntary commitment on the grounds of incompetency or disability, or court-ordered placement under guardianship or conservatorship, unless the practitioner demonstrates by clear and convincing evidence, and the USPTO Director finds there is a genuine issue of material fact that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such infirmity of proof establishing the transfer to disability status, judicial declaration of incompetency, judicial order for involuntary commitment on the grounds of incompetency or disability, or placement by court order under guardianship or conservatorship that the USPTO Director could not, consistent with the Office's duty, accept as final the conclusion on that subject;

(iii) The imposition of the same disability status or transfer to disability status by the USPTO Director would result in grave injustice; or

(iv) The practitioner is not the individual transferred to disability status, judicially declared incompetent, judicially ordered for involuntary commitment on the grounds of incompetency or disability, or placed by court order under guardianship or conservatorship.

(2) If the USPTO Director determines that there is no genuine issue of material fact with regard to any of the elements of paragraphs (d)(1)(i) through (d)(1)(iv) of this section, the USPTO Director shall enter an appropriate final order. If the USPTO Director is unable to make that

determination because there is a genuine issue of material fact, the USPTO Director shall enter an appropriate order dismissing the OED Director's request for such reason.

* * * * *

(g) *Order imposing reciprocal transfer to disability inactive status or order imposing initial transfer to disability inactive status.* An order by the USPTO Director imposing reciprocal transfer to disability inactive status or transferring a practitioner to disability inactive status shall be effective immediately and shall be for an indefinite period until further order of the USPTO Director. A copy of the order transferring a practitioner to disability inactive status shall be served upon the practitioner, the practitioner's guardian, and/or the director of the institution to which the practitioner has been committed in the manner the USPTO Director may direct. A practitioner reciprocally transferred or transferred to disability inactive status shall comply with the provisions of this section and § 11.58 and shall not engage in practice before the Office in patent, trademark, and other non-patent law unless and until reinstated to active status.

* * * * *

(i) *Employment of practitioners on disability inactive status.* A practitioner in disability inactive status must obtain permission from the OED Director to engage in paralegal activity permitted under § 11.58(h). Permission will be granted only if the practitioner has complied with all the conditions of § 11.58 applicable to disability inactive status. In the event that permission is granted, the practitioner shall fully comply with the provisions of § 11.58(h).

* * * * *

■ 22. Amend § 11.34 by revising paragraph (c) to read as follows:

§ 11.34 Complaint.

* * * * *

(c) The complaint shall be filed in the manner prescribed by the USPTO Director. The term "filed" means the delivery, mailing, or electronic transmission of a document to a hearing officer or designee in connection with a disciplinary complaint or related matter.

* * * * *

■ 23. Revise § 11.35 to read as follows:

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent by any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who

delivers the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was delivered to the respondent.

(2) By mailing a copy of the complaint by Priority Mail Express®, first-class mail, or any delivery service that provides confirmation of delivery or attempted delivery to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11, or

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides the ability to confirm delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11; or

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case the time for filing an answer shall be 30 days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with § 11.36(d), and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint may be served on the attorney in lieu of service on the respondent in the manner provided for in paragraph (a) or (b) of this section.

■ 24. Amend § 11.39 by revising the section heading and paragraphs (a), (b), and (f) to read as follows:

§ 11.39 Hearing officer; responsibilities; review of interlocutory orders; stays.

(a) *Designation.* A hearing officer designated by the USPTO Director shall conduct disciplinary proceedings as provided by this part.

(b) *Independence of the hearing officer.* (1) A hearing officer designated in accordance with paragraph (a) of this section shall not be subject to first-level or second-level supervision by either the USPTO Director or OED Director or his or her designee.

(2) A hearing officer designated in accordance with paragraph (a) of this section shall not be subject to supervision of the person(s) investigating or prosecuting the case.

(3) A hearing officer designated in accordance with paragraph (a) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer designated in accordance with paragraph (a) of this section shall be either an administrative law judge appointed under 5 U.S.C. 3105 or an attorney designated under 35 U.S.C. 32. The hearing officer shall possess suitable experience and training in conducting hearings, reaching a determination, and rendering an initial decision in an equitable manner.

* * * * *

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (e)(2) of this section, any time period set by the hearing officer for taking action shall not be stayed unless ordered by the USPTO Director or the hearing officer.

* * * * *

■ 25. Amend § 11.40 by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 11.40 Representative for OED Director or respondent.

* * * * *

(b) The Deputy General Counsel for Intellectual Property and Solicitor and attorneys in the Office of the Solicitor shall represent the OED Director. The attorneys representing the OED Director in disciplinary proceedings shall not consult with the USPTO Director, the General Counsel, the Deputy General Counsel for General Law, or an individual designated by the USPTO Director to decide disciplinary matters regarding the proceeding.

(c) The General Counsel and the Deputy General Counsel for General Law shall remain screened from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings unless access is appropriate to perform their duties. After a final decision is entered in a disciplinary proceeding, the OED Director and attorneys representing the OED Director shall be available to counsel the USPTO Director, the General Counsel, and the Deputy

General Counsel for General Law in any further proceedings.

■ 26. Amend § 11.41 by revising paragraph (a) to read as follows:

§ 11.41 Filing of papers.

(a) The provisions of §§ 1.8 and 2.197 of this chapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer. The term “filed” means the delivery, mailing, or electronic transmission of a document to a hearing officer or designee in connection with a disciplinary complaint or related matter.

* * * * *

■ 27. Revise § 11.43 to read as follows:

§ 11.43 Motions before a hearing officer.

Motions, including all prehearing motions commonly filed under the Federal Rules of Civil Procedure, shall be served on the opposing party and filed with the hearing officer. Each motion shall be accompanied by a written memorandum setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. Unless extended by the tribunal for good cause, an opposing party shall serve and file a memorandum in response to the motion within 21 days of the date of service of the motion, and the moving party may file a reply memorandum within 14 days after service of the opposing party’s responsive memorandum. All memoranda shall be double-spaced and written in 12-point font unless otherwise ordered by the hearing officer. Every motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good-faith effort to resolve the issues raised by the motion and whether the motion is opposed. If, prior to a decision on the motion, the parties resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer.

■ 28. Amend § 11.44 by revising paragraphs (a) and (b) to read as follows:

§ 11.44 Hearings.

(a) The hearing officer shall preside over hearings in disciplinary proceedings. After the time for filing an answer has elapsed, the hearing officer shall set the time and place for the hearing. In cases involving an incarcerated respondent, any necessary

oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct the hearing as if the proceeding were subject to 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the OED Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been issued by the hearing officer, the hearing officer may deem the respondent to have waived the opportunity for a hearing and may proceed with the hearing in the absence of the respondent. Where the respondent does not appear, the hearing officer may strike the answer or any other pleading, deem the respondent to have admitted the facts as alleged in the complaint, receive evidence in aggravation or mitigation, enter a default judgment, and/or enter an initial decision imposing discipline on the respondent.

* * * * *

■ 29. Amend § 11.50 by revising paragraph (a) to read as follows:

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, speculative, or unduly repetitious.

* * * * *

■ 30. Revise § 11.51 to read as follows:

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of the personal appearance of a witness before the hearing officer may be taken by the respondent or the OED Director by agreement; or upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. If a motion to take a deposition is granted, the hearing officer shall authorize a subpoena to be issued pursuant to 35 U.S.C. 24. If the deponent is a USPTO employee, the respondent shall comply with the requirements of part 104 of this chapter.

(b) A party seeking a deposition shall give reasonable notice of not less than 14 days unless a shorter period is agreed upon by the parties or authorized by the hearing officer. The notice shall state the date, time, and place of the deposition.

(c) Depositions may be taken upon oral or written questions before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. Deposition expenses shall be borne by the party at whose instance the deposition is taken.

(d) When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice, and copies of any written cross-questions will be served by hand or Priority Mail Express® not less than five days before the date of the taking of the deposition unless the parties mutually agree otherwise.

(e) Testimony by deposition may be recorded by audiovisual means provided that:

(1) The notice of deposition states that the method of recording is audiovisual, and

(2) A written transcript of the deposition is prepared by a court reporter who was present at the deposition and recorded the testimony.

(f) A party on whose behalf a deposition is taken shall file with the hearing officer a copy of a transcript of the deposition signed by a court reporter and a copy of any audiovisual recording and shall serve one copy of the transcript and any audiovisual recording upon the opposing party.

(g) Depositions may not be taken to obtain discovery, except as provided for in paragraph (h) of this section.

(h) When the OED Director and the respondent agree in writing, a discovery deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be mutually agreeable to the OED Director and the respondent. The deposition shall not be filed with the hearing officer and may not be admitted into evidence before the hearing officer unless he or she orders the deposition admitted into evidence. The admissibility of the deposition shall lie within the discretion of the hearing officer, who may reject the deposition on any reasonable basis, including the fact that demeanor is involved and that the witness should have been called to appear personally before the hearing officer.

■ 31. Revise § 11.52 to read as follows:

§ 11.52 Written discovery.

(a) After an answer is filed under § 11.36, a party may seek written discovery of only relevant evidence. The party seeking written discovery shall file a motion under § 11.43 explaining in detail, for each request made, how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer. The

motion shall include a copy of the proposed written discovery requests. Any response shall include specific objections to each request, if any. Any objection not raised in the response will be deemed to have been waived.

(b) If the hearing officer concludes that the proposed written discovery is reasonable and relevant, the hearing officer, under such conditions as he or she deems appropriate, may order an opposing party, within 30 days, or longer if so ordered by the hearing officer, to:

(1) Answer a reasonable number of requests for admission, including requests for admission as to the genuineness of documents;

(2) Answer a reasonable number of interrogatories;

(3) Produce for inspection and copying a reasonable number of documents; and

(4) Produce for inspection a reasonable number of things other than documents.

(c) Discovery shall not be authorized under paragraph (a) of this section of any matter that:

(1) Will be used by another party solely for impeachment;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any other disciplinary proceeding before the Office;

(4) Relates to experts;

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

(d) The hearing officer may deny discovery requested under paragraph (a) of this section if the discovery sought:

(1) Will unduly delay the disciplinary proceeding;

(2) Will place an undue burden on the party required to produce the discovery sought; or

(3) Consists of information that is available:

(i) Generally to the public,

(ii) Equally to the parties, or

(iii) To the party seeking the discovery through another source.

(e) A request for admission will be deemed admitted if the party to whom the request is directed fails to respond or object to the request within the time allowed.

(f) The hearing officer may require parties to file and serve, prior to any hearing, a pre-hearing statement that contains:

(1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief;

(2) A list of proposed witnesses;

(3) As to each proposed expert witness:

(j) An identification of the field in which the individual will be qualified as an expert,

(ii) A statement as to the subject matter on which the expert is expected to testify,

(iii) A complete statement of all opinions to which the expert is expected to testify and the basis and reasons for them, and

(iv) A description of all facts or data considered by the expert in forming the opinions; and

(4) Copies of memoranda reflecting the respondent's own statements to administrative representatives.

■ 32. Revise § 11.53 to read as follows:

§ 11.53 Proposed findings and conclusions; post-hearing memorandum.

(a) Except in cases in which the respondent has failed to answer the complaint or the amended complaint, or appear at a hearing, the hearing officer, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

(b) The OED Director shall serve and file a post-hearing memorandum within 30 days after the hearing transcript has been filed with the hearing officer. The respondent shall have 30 days after service of the OED Director's post-hearing memorandum to file a responsive post-hearing memorandum. The OED Director may file a reply memorandum within 21 days after service of any responsive post-hearing memorandum.

(c) The respondent shall serve and file a post-hearing memorandum with respect to any asserted affirmative defenses, or other matters for which the respondent bears the burden of proof, within 30 days after the hearing transcript has been filed with the hearing officer. The OED Director shall have 30 days after service of the respondent's post-hearing memorandum to file a responsive post-hearing memorandum. The respondent may file a reply memorandum within 21 days after service of any responsive post-hearing memorandum.

(d) The OED Director's and the respondent's responsive post-hearing memoranda shall be limited to 50 pages, 12-point font, double-spacing, and one-inch margins, and the reply memoranda shall be limited to 25 pages, 12-point font, double-spacing, and one-inch margins, unless otherwise ordered by the hearing officer.

(e) The hearing officer may extend the time for filing a post-hearing

memorandum and may also increase the page limits, for good cause shown.

■ 33. Revise § 11.54 to read as follows:

§ 11.54 Initial decision of hearing officer.

(a) The hearing officer shall make an initial decision in the case. The decision will include:

(1) A statement of findings of fact and conclusions of law, as well as the reasons or bases for those findings and conclusions with specific references to the record, upon all the material issues of fact, law, or discretion presented on the record; and

(2) An order of default judgment, of suspension or exclusion from practice, of reprimand, of probation, or an order dismissing the complaint. The order also may impose any conditions deemed appropriate under the circumstances.

(b) The initial decision of the hearing officer shall explain the reason for any default judgment, reprimand, suspension, exclusion, or probation and shall explain any conditions imposed with discipline. In determining any sanction, the following four factors shall be considered if they are applicable:

(1) Whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession;

(2) Whether the practitioner acted intentionally, knowingly, or negligently;

(3) The amount of the actual or potential injury caused by the practitioner's misconduct; and

(4) The existence of any aggravating or mitigating factors.

(c) The hearing officer shall transmit a copy of the initial decision to the OED Director and to the respondent and shall transmit the record of the proceeding to the OED Director within 14 days, or as soon as practicable if thereafter, of the date of the initial decision.

(d) In the absence of an appeal to the USPTO Director, the decision of the hearing officer will, without further proceedings, become the final decision of the USPTO Director 30 days from the date of the decision of the hearing officer.

■ 34. Revise § 11.55 to read as follows:

§ 11.55 Appeal to the USPTO Director.

(a) Within 14 days after the date of the initial decision of the hearing officer under §§ 11.25 or 11.54, either party may appeal to the USPTO Director by filing a notice of appeal. The notice shall be filed with the General Counsel for the USPTO Director at the address set forth in § 1.1(a)(3)(iv) of this chapter and served on the opposing party. If both parties file notices of appeal, the first to file is deemed the appellant for purposes of this rule. If both file on the

same day, the respondent is deemed the appellant.

(b) Any notice of cross-appeal shall be filed within 14 days after the date of service of the notice of appeal.

(c) After a notice of appeal is filed, the OED Director shall transmit the entire record to the USPTO Director and provide a copy to the respondent.

(d) The appellant's brief shall be filed within 30 days after the date of service of the record.

(e) Any appellee's brief shall be filed within 30 days after the date of service of the appellant's brief.

(f) The appellant's and appellee's briefs shall comply with the Federal Rules of Appellate Procedure 28(a)(2), (3), (5), (10), and 32(a)(4)–(7) unless otherwise ordered by the USPTO Director.

(g) Any reply brief shall be filed within 14 days after the date of service of the appellee's brief and, unless otherwise ordered by the USPTO Director, shall comply with Rules 28(c) and 32(a)(4)–(7) of the Federal Rules of Appellate Procedure.

(h) If a cross-appeal has been filed, the parties shall comply with Rules 28.1(c), (e), and (f) of the Federal Rules of Appellate Procedure unless otherwise ordered by the USPTO Director.

(i) References to the record in the briefs must be to the pages of the certified record.

(j) An appeal or cross-appeal must include exceptions to the decisions of the hearing officer and supporting reasons for those exceptions. Any exception not raised will be deemed to have been waived and will be disregarded by the USPTO Director in reviewing the initial decision.

(k) The USPTO Director may refuse entry of a nonconforming brief.

(l) The USPTO Director will decide the appeal on the record made before the hearing officer.

(m) Unless the USPTO Director permits, no further briefs or motions shall be filed. The USPTO Director may extend the time for filing a brief upon the granting of a motion accompanied by a supporting affidavit setting forth good cause warranting the extension.

(n) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered any earlier by due diligence.

(o) Motions shall be served on the opposing party and filed with the USPTO Director. Each motion shall be

accompanied by a written memorandum setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. Unless extended by the USPTO Director for good cause, within 21 days of the date of service of the motion, an opposing party shall serve and file a response to the motion, and the moving party may file a reply within 14 days after service of the opposing party's responsive memorandum. All memoranda shall comply with Rules 32(a)(4)–(6) of the Federal Rules of Appellate Procedure unless otherwise ordered by the USPTO Director. Every motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good faith effort to resolve the issues raised by the motion and whether the motion is opposed. If, prior to a decision on the motion, the parties resolve issues raised by a motion presented to the USPTO Director, the parties shall promptly notify the USPTO Director.

■ 35. Amend § 11.56 by revising paragraph (c) to read as follows:

§ 11.56 Decision of the USPTO Director.

* * * * *

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within 20 days from the date of entry of the decision. The other party may file a response to the request for reconsideration within 14 days of the filing of the request. No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence or clear error of law or fact, and the requestor must demonstrate that any newly discovered evidence could not have been discovered any earlier by due diligence. Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

■ 36. Revise § 11.57 to read as follows:

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by the USPTO Director in a disciplinary case may be had by a petition filed in accordance with 35 U.S.C. 32. Any such petition shall be filed within 30 days after the date of the final decision.

(b) The respondent must serve the USPTO Director with the petition. The respondent must serve the petition in accordance with Rule 4 of the Federal

Rules of Civil Procedure and § 104.2 of this chapter.

(c) Except as provided for in § 11.56(c), an order for discipline in a final decision will not be stayed except on proof of exceptional circumstances.

■ 37. Revise § 11.58 to read as follows:

§ 11.58 Duties of disciplined practitioner or practitioner in disability inactive status.

(a) *Compliance requirements.* An excluded or suspended practitioner will not be automatically reinstated at the end of his or her period of exclusion or suspension. Unless otherwise ordered by the USPTO Director, an excluded or suspended practitioner must comply with the provisions of this section and § 11.60 to be reinstated. A practitioner transferred to disability inactive status must comply with the provisions of this section and § 11.29 to be reinstated unless otherwise ordered by the USPTO Director. Failure to comply with the provisions of this section may constitute grounds for denying reinstatement and cause for further action.

(b) *Practice prohibitions.* Any excluded or suspended practitioner, or practitioner transferred to disability inactive status, shall:

(1) Not engage in practice before the Office in patent, trademark, or other non-patent matters;

(2) Not advertise or otherwise hold himself or herself out as authorized or able to practice before the Office; and

(3) Take all necessary steps to remove any advertisements or other representations that would reasonably suggest that the practitioner is authorized or able to practice before the Office.

(c) *Thirty-day requirements.* Within 30 days after the date of the order of exclusion, suspension, or transfer to disability inactive status, an excluded or suspended practitioner, or practitioner transferred to disability inactive status, shall:

(1) Withdraw from representation in all matters pending before the Office;

(2) Provide written notice of the order of exclusion, suspension, or transfer to disability inactive status to all State and Federal jurisdictions and administrative agencies to which the practitioner is admitted to practice;

(3) Provide to all clients having immediate or prospective business before the Office in patent, trademark, or other non-patent matters:

(i) Written notice of the order of exclusion, suspension, or transfer to disability inactive status, that calls attention to the practitioner's lack of authority to act as a practitioner after the effective date of the order; specifies any urgent dates for the client's matters;

and advises the client to act promptly to seek legal advice elsewhere if the client is not already represented by another practitioner;

(ii) Any papers or other property to which the clients are entitled, or schedule a suitable time and place where the papers and other property may be obtained, and call attention to any urgency for obtaining the papers or other property; and

(iii) Any unearned fees for practice before the Office and any advanced costs not expended;

(4) Provide written notice of the order of exclusion, suspension, or transfer to disability inactive status to all opposing parties in matters pending before the Office and provide in the notice a mailing address for each client of the practitioner who is a party in the pending matter; and

(5) Serve all notices required by paragraphs (c)(2), (c)(3), and (c)(4) of this section by certified mail, return receipt requested, unless the intended recipient is located outside the United States. Where the intended recipient is located outside the United States, all notices shall be sent by a delivery service that provides the ability to confirm delivery or attempted delivery.

(d) *Forty-five-day requirements.* Within 45 days after the date of the order of exclusion, suspension, or transfer to disability inactive status, an excluded or suspended practitioner, or practitioner transferred to disability inactive status, shall file with the OED Director an affidavit of compliance certifying that the practitioner has fully complied with the provisions of the order, with this section, and with § 11.116 for withdrawal from representation. Appended to the affidavit of compliance shall be:

(1) A copy of each form of notice; the names and addresses of the clients, practitioners, courts, and agencies to which notices were sent; and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise ordered by the USPTO Director;

(2) A schedule showing the location, title, and account number of every account in which the practitioner holds, or held as of the entry date of the order, any client, trust, or fiduciary funds for practice before the Office;

(3) A schedule describing, and evidence showing, the practitioner's disposition of all client and fiduciary funds for practice before the Office in the practitioner's possession, custody,

or control as of the date of the order or thereafter;

(4) A list of all State, Federal, and administrative jurisdictions to which the practitioner is admitted to practice; and

(5) A description of the steps taken to remove any advertisements or other representations that would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office.

(e) *Requirement to update correspondence address.* An excluded or suspended practitioner, or a practitioner transferred to disability inactive status, shall continue to file a statement in accordance with § 11.11 regarding any change of residence or other address to which communications may thereafter be directed.

(f) *Limited recognition for winding up practice.* Unless otherwise provided by an order of the USPTO Director, an excluded or suspended practitioner, or practitioner transferred to disability inactive status, shall not engage in any practice before the Office. The USPTO Director may grant such a practitioner limited recognition for a period of no more than 30 days to conclude work on behalf of a client on any matters pending before the Office. If such work cannot be concluded, the practitioner shall so advise the client so that the client may make other arrangements.

(g) *Required records.* An excluded or suspended practitioner, or practitioner transferred to disability inactive status, shall retain copies of all notices sent and maintain records of the various steps taken under this section. The practitioner shall provide proof of compliance as a condition precedent to the granting of any petition for reinstatement.

(h) *Aiding another practitioner while suspended or excluded; acting as a paralegal.* An excluded or suspended practitioner, or practitioner in disability inactive status, may act as a paralegal for a supervising practitioner or perform other services for the supervising practitioner that are normally performed by laypersons, provided:

(1) The practitioner is under the direct supervision of the supervising practitioner;

(2) The practitioner is a salaried employee of:

- (i) The supervising practitioner,
 - (ii) The supervising practitioner's law firm, or
 - (iii) A client-employer who employs the supervising practitioner as a salaried employee;
- (3) The supervising practitioner assumes full professional responsibility

to any client and the Office for any work performed by the practitioner for the supervising practitioner; and

(4) The practitioner does not:

(i) Communicate directly in writing, orally, or otherwise with a client, or prospective client, of the supervising practitioner in regard to any immediate or prospective business before the Office;

(ii) Render any legal advice or any legal services in regard to any immediate or prospective business before the Office; or

(iii) Meet in person with, regardless of the presence of the supervising practitioner:

(A) Any Office employee in connection with the prosecution of any patent, trademark, or other matter before the Office;

(B) Any client, or prospective client, of the supervising practitioner, the supervising practitioner's law firm, or the client-employer of the supervising practitioner regarding immediate or prospective business before the Office; or

(C) Any witness or potential witness whom the supervising practitioner, the supervising practitioner's law firm, or the supervising practitioner's client-employer may, or intends to, call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(i) *Reinstatement after aiding another practitioner while suspended or excluded.* When an excluded or suspended practitioner, or practitioner transferred to disability inactive status, acts as a paralegal or performs services under paragraph (h) of this section, the practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The practitioner has filed with the OED Director an affidavit that:

(i) Explains in detail the precise nature of all paralegal or other services performed by the practitioner, and

(ii) Shows by clear and convincing evidence that the practitioner has complied with the provisions of this section and all USPTO Rules of Professional Conduct; and

(2) The supervising practitioner has filed with the OED Director a written statement that:

(i) States that the supervising practitioner has read the affidavit required by paragraph (i)(1) of this section and that the supervising practitioner believes every statement in the affidavit to be true, and

(ii) States that the supervising practitioner believes that the excluded or suspended practitioner, or practitioner transferred to disability inactive status, has complied with paragraph (h) of this section.

■ 38. Revise § 11.60 to read as follows:

§ 11.60 Petition for reinstatement of disciplined practitioner.

(a) *Restrictions on practice.* An excluded or suspended practitioner shall not resume the practice of patent, trademark, or other non-patent matters before the Office until reinstated.

(b) *Petition for reinstatement for excluded or suspended practitioners.* An excluded or suspended practitioner shall be eligible to petition for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner's full compliance with § 11.58. An excluded practitioner shall be eligible to petition for reinstatement no earlier than five years from the effective date of the exclusion.

(c) *Review of reinstatement petition.* An excluded or suspended practitioner shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this chapter. The petition for reinstatement shall be filed with the OED Director. A practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. If the excluded or suspended practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise, the OED Director shall consider the petition for reinstatement. The excluded or suspended practitioner seeking reinstatement shall have the burden of proving, by clear and convincing evidence, that:

(1) The excluded or suspended practitioner has the good moral character and reputation, competency, and learning in law required under § 11.7 for admission;

(2) The resumption of practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; and

(3) The practitioner, if suspended, has complied with the provisions of § 11.58 for the full period of suspension or, if excluded, has complied with the provisions of § 11.58 for at least five continuous years.

(d) *Petitions for reinstatement—Action by the OED Director granting reinstatement.* (1) If the excluded or

suspended practitioner is found to have complied with paragraphs (c)(1) through (c)(3) of this section, the OED Director shall enter an order of reinstatement that shall be conditioned on payment of the costs of the disciplinary proceeding to the extent set forth in paragraphs (d)(2) and (d)(3) of this section.

(2) *Payment of costs of disciplinary proceedings.* Prior to reinstatement to practice under this section, the excluded or suspended practitioner shall pay the costs of the disciplinary proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceeding and any fee paid for the services of the reporter;

(ii) All expenses paid by the OED Director or the Office that would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of the disciplinary proceeding and costs incurred in the administrative processing of the disciplinary proceeding.

(3) A practitioner may only be granted relief from an order assessing costs under this section, whether in whole or in part or by grant of an extension of time to pay these costs, upon grounds of hardship, special circumstances, or other good cause at the discretion of the OED Director.

(e) *Petitions for reinstatement—Action by the OED Director denying reinstatement.* If the excluded or suspended practitioner is found unfit to resume practice before the Office, the OED Director shall first provide the excluded or suspended practitioner with an opportunity to show cause in writing why the petition should not be denied. If unpersuaded by the showing, the OED Director shall deny the petition. In addition to the reinstatement provisions set forth in this section, the OED Director may require the excluded or suspended practitioner, in meeting the requirements of paragraph (c)(1) of this section, to take and pass the registration examination; attend ethics, substance abuse, or law practice management courses; and/or take and pass the Multistate Professional Responsibility Examination.

(f) *Right to review.* An excluded or suspended practitioner dissatisfied with a final decision of the OED Director regarding his or her reinstatement may seek review by the USPTO Director pursuant to § 11.2(d).

(g) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(h) *Reinstatement proceedings open to public.* (1) Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any excluded or suspended practitioner, the OED Director shall publish a notice that such practitioner seeks reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence regarding such matter.

(2) Up to 90 days prior to the expiration of the period of suspension or exclusion, a practitioner may file a written notice of his or her intent to seek reinstatement with the OED Director and may request that such notice be published. In the absence of such a request, notice of a petition for reinstatement will be published upon receipt of such petition.

■ 39. Revise § 11.106 to read as follows:

§ 11.106 Confidentiality of information.

(a) A practitioner shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, the disclosure is permitted by paragraph (b) of this section, or the disclosure is required by paragraph (c) of this section.

(b) A practitioner may reveal information relating to the representation of a client to the extent the practitioner reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from engaging in inequitable conduct before the Office or from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the practitioner's services;

(3) To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime, fraud, or inequitable conduct before the Office in furtherance of

which the client has used the practitioner's services;

(4) To secure legal advice about the practitioner's compliance with the USPTO Rules of Professional Conduct;

(5) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of the client;

(6) To comply with other law or a court order; or

(7) To detect and resolve conflicts of interest arising from the practitioner's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the practitioner-client privilege or otherwise prejudice the client.

(c) A practitioner shall disclose to the Office information necessary to comply with applicable duty of disclosure provisions.

(d) A practitioner shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

■ 40. Amend § 11.118 by revising paragraphs (a) and (b) to read as follows:

§ 11.118 Duties to prospective client.

(a) A person who consults with a practitioner about the possibility of forming a client-practitioner relationship with respect to a matter is a prospective client.

(b) Even when no client-practitioner relationship ensues, a practitioner who has learned information from a prospective client shall not use or reveal that information, except as § 11.109 would permit with respect to information of a former client.

* * * * *

■ 41. Revise § 11.702 to read as follows:

§ 11.702 Communications concerning a practitioner's services: specific rules.

(a) A practitioner may communicate information regarding the practitioner's services through any medium.

(b) A practitioner shall not compensate, give, or promise anything of value to a person for recommending the practitioner's services, except that a practitioner may:

(1) Pay the reasonable costs of advertisements or communications permitted by this section;

(2) Pay the usual charges of a legal service plan or a not-for-profit or qualified practitioner referral service;

(3) Pay for a law practice in accordance with § 11.117;

(4) Refer clients to another practitioner or a non-practitioner professional pursuant to an agreement not otherwise prohibited under the USPTO Rules of Professional Conduct that provides for the other person to refer clients or customers to the practitioner, if:

(i) The reciprocal referral agreement is not exclusive, and

(ii) The client is informed of the existence and nature of the agreement; and

(5) Give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a practitioner's services.

(c) A practitioner shall not state or imply that he or she is certified as a specialist in a particular field of law, unless:

(1) The practitioner has been certified as a specialist by an organization that has been approved by an appropriate authority of a State or that has been accredited by the American Bar Association, and

(2) The name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this section must include the name and contact information of at least one practitioner or law firm responsible for its content.

■ 42. Revise § 11.703 to read as follows:

§ 11.703 Solicitation of clients.

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a practitioner or law firm that is directed to a specific person the practitioner knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A practitioner shall not solicit professional employment by live person-to-person contact when a significant motive for the practitioner's doing so is the practitioner's or law firm's pecuniary gain, unless the contact is with a:

(1) Practitioner;

(2) Person who has a family, close personal, or prior business or professional relationship with the practitioner or law firm; or

(3) Person who routinely uses for business purposes the type of legal services offered by the practitioner.

(c) A practitioner shall not solicit professional employment even when not otherwise prohibited by paragraph (b) of this section, if:

(1) The target of solicitation has made known to the practitioner a desire not to be solicited by the practitioner, or

(2) The solicitation involves coercion, duress, or harassment.

(d) This section does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this section, a practitioner may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the practitioner that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons

who are not known to need legal services in a particular matter covered by the plan.

■ 43. Amend § 11.704 by revising paragraph (e) to read as follows:

§ 11.704 Communication of fields of practice and specialization.

* * * * *

(e) Individuals granted limited recognition may use the designation "Limited Recognition" but may not hold themselves out as being registered.

■ 44. Amend § 11.804 by revising paragraphs (b) and (h) to read as follows:

§ 11.804 Misconduct.

* * * * *

(b) Commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects, or be convicted of a crime that reflects adversely on the practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects;

* * * * *

(h) Be publicly disciplined on ethical or professional misconduct grounds by any duly constituted authority of:

(1) A State,

(2) The United States, or

(3) A country having disciplinary jurisdiction over the practitioner; or

* * * * *

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021-10528 Filed 5-25-21; 8:45 am]

BILLING CODE 3510-16-P

Reader Aids

Federal Register

Vol. 86, No. 100

Wednesday, May 26, 2021

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
Laws	741-6000
Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6050

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.govinfo.gov.

Federal Register information and research tools, including Public Inspection List and electronic text are located at: www.federalregister.gov.

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

23237-23576	3
23577-23842	4
23843-24296	5
24297-24474	6
24475-24696	7
24697-25798	10
25799-25942	11
25942-26148	12
26149-26346	13
26347-26632	14
26633-26824	17
26825-27014	18
27015-27260	19
27261-27504	20
27505-27796	21
27797-27966	24
27967-28234	25
28235-28468	26

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
10189	23843
10190	23845
10191	23847
10192	23849
10193	23851
10194	23853
10195	23855
10196	23857
10197	23859
10198	23861
10199	24297
10200	24301
10201	24477
10202	24479
10203	24697
10204	25799
10205	25943
10206	25945
10207	26147
10208	26345
10209	27015
10210	27017
10211	27019
10212	27021
10213	27023
10214	27505
Executive Orders:	
14027	25947
14028	26633
14029	27025
14030	27967

Administrative Orders:

Memorandums:	
Memorandum of	
September 24, 2015	
(Superseded in part	
by Memorandum of	
May 18, 2021)	27703
Memorandum of May	
18, 2021	27703
Presidential	
Determinations: No.	
2021-06 of May 3,	
2021	24475
Presidential	
Determinations:	
No. 2021-07 of May	
19, 2021	28235
Notices:	
Notice of May 6,	
2021	25793
Notice of May 6,	
2021	25795
Notice of May 6,	
2021	25797
Notice of May 11,	
2021	26339
Notice of May 11,	
2021	26341

5 CFR

2611	25801
9801	26649

6 CFR

Ch. I	26825
37	23237

7 CFR

3	24699
989	26347
4280, Subpart D	26348
Proposed Rules:	
205	25961
993	25975
1280	24513

8 CFR

214	27027, 28198
274a	28198
Proposed Rules:	
1	24750
103	24750, 25809
106	24751
204	24750
207	24750
208	24750
209	24750
210	24750
212	24750, 25809
214	24750
215	24750
216	24750
235	24750
236	24750
240	24750
241	24751
244	24750
245	24750
245a	24750
264	24750
274	25809
274a	24751
287	24750
316	24750
333	24750
335	24750

10 CFR

72	26651, 28237
430	24483, 24484
Proposed Rules:	
50	24362, 25977
51	24514
52	24362
429	24516, 28298
430	23635, 24538, 27281, 28001
431	23875, 24516, 24752, 27054, 27298, 28005, 28298

11 CFR	239.....25803	32 CFR	9.....27150
Proposed Rules:	249.....25803	68.....27974	52.....24564, 24569, 24809,
113.....23300	269.....25803	310.....26671	24829, 24835, 25978, 26448,
12 CFR	274.....25803	Proposed Rules:	26450, 26687, 27344, 27346,
9.....28238	Proposed Rules:	97.....26444	27349, 27543
215.....27507	240.....24364	159.....28042	81.....23309
627.....27510	275.....26685	310.....28047	84.....27150
655.....27797	18 CFR	33 CFR	300.....26452
701.....28241	157.....26150	100.....23608, 23865, 24326,	Ch. IX.....26888
703.....28241	401.....28262	24492, 27518, 27808, 28265	41 CFR
741.....28241	420.....28262	117.....23278, 23609, 27519	Proposed Rules:
746.....28241	19 CFR	165.....23279, 23611, 23613,	300–70.....26455
1242.....23577	4.....27973	23865, 24710, 25949, 26386,	301–74.....26455
Proposed Rules:	Ch. I.....23277, 26836, 27800,	26837, 27034, 27520, 27523,	Ch. 301 Appendix E.....26455
30.....24755	7802	28267, 28268, 28270, 28273	42 CFR
208.....24755	122.....27973	Ch. II.....27274	37.....24336
235.....26189	123.....27973	401.....23241	412.....24735
328.....24770	145.....27973	Proposed Rules:	405.....26849
364.....24755	149.....27973	100.....28049	483.....26306
614.....27308	361.....27513	117.....23639, 23880	510.....23496
13 CFR	20 CFR	165.....24807, 25830	Proposed Rules:
126.....23863	655.....26164, 28198	34 CFR	412.....25070
Proposed Rules:	656.....26164	668.....26608	413.....25070
121.....28012	Proposed Rules:	677.....26608	425.....25070
14 CFR	655.....24368	Proposed Rules:	455.....25070
13.....23241	21 CFR	Ch. II.....23304	495.....25070
25.....28250	1308.....23602, 24487, 27803	Ch. VI.....28299	44 CFR
39.....23593, 23595, 23599,	1310.....24703	37 CFR	64.....24739, 28290
24485, 26149, 26365, 26367,	Proposed Rules:	1.....28442	45 CFR
26370, 26373, 26651, 26826,	573.....24564	11.....28442	86.....27984
26829, 26831, 26833, 27028,	22 CFR	Proposed Rules:	92.....27984
27031, 27261, 27264, 27268,	228.....24708	1.....28301	147.....24140
27271	23 CFR	2.....26862	150.....24140
71.....26377, 26378, 26379,	Proposed Rules:	7.....26862	153.....24140
26380, 27510, 27511, 27798,	Ch. I.....23876	38 CFR	155.....24140
27973	Ch. II.....23876	17.....24494	156.....24140
77.....25801	Ch. III.....23876	Proposed Rules:	158.....24140
95.....28253	25 CFR	3.....27340	184.....24140
97.....26382, 26385	224.....27806	17.....27340	670.....27985, 27989
244.....23260	26 CFR	18.....27340	1173.....26184
259.....23260	53.....23865	21.....27340	1635.....27037
383.....23241	27 CFR	39 CFR	46 CFR
406.....23241	Proposed Rules:	3.....24712	221.....23241
Proposed Rules:	447.....27720	10.....24712	307.....23241
Ch. I.....23876	478.....27720	Proposed Rules:	340.....23241
39.....23301, 24546, 24549,	479.....27720	233.....27823	356.....23241
24551, 24554, 24556, 24560,	29 CFR	40 CFR	Proposed Rules:
24778, 24780, 24783, 24786,	780.....24303	2.....26842	Ch. II.....23876
24790, 25810, 25812, 26195,	788.....24303	9.....24328	47 CFR
26198, 26682, 26855, 26857,	795.....24303	52.....24499, 24500, 24502,	1.....26677, 27275
27323, 27535, 27538, 27540,	1601.....28263	24503, 24505, 24507, 24713,	2.....23281, 23614
28038, 28040	2204.....26658	24715, 24717, 24718, 24726,	15.....23281
71.....24562, 21782, 24792,	Proposed Rules:	24728, 25951, 25954, 26179,	20.....23614
24794, 24795, 24797, 24798,	1910.....27332, 27338	26181, 26388, 26401, 26843,	68.....23614
24800, 24801, 24803, 24805,	30 CFR	27035, 27524, 27532, 27976,	73.....23866, 23868, 24339,
26861, 27326, 27327, 27329,	250.....23606	28275	24510, 24741, 26422, 27813,
27331	31 CFR	62.....24730, 27756	27990
Ch. II.....23876	35.....26786	81.....27035, 27532, 27981	76.....26185
Ch. III.....23876	536.....26661	82.....24444	90.....23281, 26423
15 CFR	596.....27273	83.....26406	95.....23281
Ch. XV.....23271	598.....26661	112.....27984	Proposed Rules:
16 CFR	Proposed Rules:	136.....27226	1.....26262, 27354
1112.....26654	1910.....27332, 27338	141.....28277	15.....23323
1130.....26654	30 CFR	180.....24731, 25956, 26672,	64.....27354
1232.....26654	250.....23606	26845	73.....23340, 24837, 25978,
Proposed Rules:	31 CFR	300.....26419	25979
Ch. II.....25817	35.....26786	721.....24328	48 CFR
17 CFR	536.....26661	725.....24328	204.....27275
232.....25803	Proposed Rules:	Proposed Rules:	
	100.....23877	Ch. I.....27546	

207.....	27277	214.....	23241	240.....	23241	50 CFR
212.....	27275	215.....	23241	241.....	23241	17.....
213.....	27277	216.....	23241	242.....	23241	217.....
215.....	27277	217.....	23241	243.....	23241	218.....
223.....	27279	218.....	23241	244.....	23241	622.....
242.....	27277	219.....	23241	272.....	23241	635.....
252.....	27275, 27277	220.....	23241	386.....	23241	648.....
253.....	27277	221.....	23241	578.....	23241	26186, 27042, 28292
Proposed Rules:		222.....	23241	Ch. XII.....	26825	660.....
212.....	27354	223.....	23241	1570.....	23629	27816, 28293
215.....	27354, 27358	224.....	23241	1582.....	23629	665.....
216.....	27354	225.....	23241	Proposed Rules:		679.....
233.....	27354	227.....	23241	Ch. I.....	23876	Proposed Rules:
236.....	27358	228.....	23241	Ch. II.....	23876	10.....
242.....	27358	229.....	23241	Ch. III.....	23876	17.....
252.....	27354, 27358	230.....	23241	Ch. V.....	23876	20.....
Ch. 12.....	23876	231.....	23241	531.....	25980	32.....
		233.....	23241	533.....	25980	71.....
49 CFR		234.....	23241	Ch. VI.....	23876	224.....
107.....	23241	235.....	23241	Ch. VII.....	23876	600.....
171.....	23241	236.....	23241	Ch. VIII.....	23876	635.....
190.....	23241	237.....	23241	830.....	27550	648.....
209.....	23241	238.....	23241	Ch. X.....	23876	660.....
213.....	23241	239.....	23241	Ch. XI.....	23876	679.....
						24511
						24746, 28294
						24573
						23882, 25833
						23641
						23794
						23794
						23657
						27686
						25992, 27686
						28323
						28325
						26888

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at <https://www.archives.gov/federal-register/laws>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available at <https://www.govinfo.gov>. Some laws may not yet be available.

S. 937/P.L. 117-13
COVID-19 Hate Crimes Act
(May 20, 2021; 135 Stat. 265)
Last List May 6, 2021

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly

enacted public laws. To subscribe, go to <https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1>

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.