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

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

[NRC-2017-0090]

RIN 3150-AK04

### Advanced Boiling Water Reactor (ABWR) Design Certification Renewal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule and issuance of environmental assessment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to renew the U.S. Advanced Boiling Water Reactor standard design certification. Applicants or licensees intending to construct and operate a U.S. Advanced Boiling Water Reactor standard design may do so by referencing this design certification rule. The applicant for the renewal of the U.S. Advanced Boiling Water Reactor standard design certification is General Electric-Hitachi Nuclear Energy Americas, LLC.

**DATES:** The final rule is effective September 29, 2021, unless significant adverse comments are received by August 2, 2021. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Office of the Federal Register as of September 29, 2021.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0090. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For

technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

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

#### FOR FURTHER INFORMATION CONTACT:

Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3561, email: [Dennis.Andrukat@nrc.gov](mailto:Dennis.Andrukat@nrc.gov), or James Shea, Office of Nuclear Reactor Regulation, telephone: 301-415-1388, email: [James.Shea@nrc.gov](mailto:James.Shea@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0090 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-2017-0090.

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

- *Attention: The Public Document Room (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](mailto: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.

- *Attention: The Technical Library,* which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at [Library.Resource@nrc.gov](mailto:Library.Resource@nrc.gov) between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

##### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0090 in your comment submission.

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

If you are requesting or aggregating comments from other persons for



submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. Comments received after August 2, 2021, will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule also will be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

## II. Rulemaking Procedure

Because the NRC anticipates that this action will be non-controversial, the NRC is using the “direct final rule procedure” for this rule. The rule will become effective on September 29, 2021. However, if the NRC receives significant adverse comments by August 2, 2021, then the NRC will publish a document that withdraws this direct final rule and would subsequently address the comments received in any final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC does not intend to initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment in which the commenter explains why the rule (including the environmental assessment) would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

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

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

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

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

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

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section in the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

## III. Background

The General Electric Company (GE) submitted the U.S. Advanced Boiling Water Reactor (U.S. ABWR) standard design certification initial application on September 29, 1987. The NRC initially docketed the application (Docket No. STN 50–605) on February 22, 1988, but later changed the docket number to 52–001 on March 20, 1992 (57 FR 9749) to reflect GE’s request [or the applicant’s request] to review the application under part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” of title 10 of the Code of Federal Regulations (10 CFR). The NRC documented its review in NUREG–1503, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,” in July 1994 (ADAMS Accession No. ML080670592), and NUREG–1503, Supplement 1, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,” in May 1997 (ADAMS Accession No. ML080710134). The NRC issued the agency’s first design certification (DC) rule, for the U.S. ABWR, in the **Federal Register** (62 FR 25800), effective June 11, 1997. In 2007, GE and Hitachi Nuclear Energy formed an alliance, and General Electric-Hitachi Nuclear Energy Americas, LLC, (GEH) became the entity retaining the U.S. ABWR design from GE.

On December 7, 2010, GEH submitted its application to renew the certification of the U.S. ABWR standard design to the NRC under subpart B, “Standard design certifications,” to 10 CFR part 52. The NRC published a notice of receipt of the application in the **Federal Register** on January 27, 2011 (76 FR 4948). On February 18, 2011, the NRC formally accepted the design certification renewal application for docketing (76 FR 9612). The preapplication information submitted before the NRC formally accepted the application for docketing can be found in ADAMS under Docket No. PROJ0774.

Subpart B to 10 CFR part 52 presents the process for obtaining standard design certifications. Under § 52.57(a), an application for DC renewal must contain all information necessary to bring the information and data contained in the previous application up to date. Updates under § 52.57(a) include clarifications consistent with the original understanding of the design information, and changes to correct known errors, typographical errors, or defects, as defined in § 21.3. For the NRC to issue a rule granting the DC renewal under § 52.59(a), the design, either as originally certified or as modified during the rulemaking on renewal, must comply with (1) the Atomic Energy Act of 1954, as amended (AEA), (2) the NRC regulations applicable and in effect at the time the certification was issued, and (3) the applicable requirements of § 50.150, “Aircraft impact assessment.”<sup>1</sup>

A DC renewal applicant may propose to amend the design under § 52.59(c). An amendment is an applicant-proposed change that is not an update under § 52.57(a) or a change to meet the renewal standards in § 52.59(a). Amendments must comply with the AEA and the NRC’s regulations applicable and in effect at the time of renewal rather than the § 52.29(a) standards. If the amendment request entails such an extensive change to the certified design that an essentially new standard design is being proposed, a new DC application must be submitted.

In addition, NRC regulations at § 52.59(b) state that the Commission may impose other requirements if it determines any of the following:

1. They are necessary for adequate protection to public health and safety or common defense and security;

2. They are necessary for compliance with the NRC’s regulations and orders applicable and in effect at the time the certification was issued; or

3. There is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementing those requirements are justified in view of this increased protection.

The final U.S. ABWR DC rule for the original certification, Supplementary

<sup>1</sup> The requirement for modifications in DC renewals to address § 50.150 was added to § 52.59(a) by a rule published June 12, 2009, requiring applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft (74 FR 28111). This requirement is applicable to the U.S. ABWR DC renewal because this is its first renewal and the U.S. ABWR DC was in effect on July 13, 2009.

Information, Section II.A.1, “Finality,” stated that the NRC “does not plan or expect to be able to conduct a de novo review of the entire design if a certification renewal application is filed under § 52.59[.]” “Criteria for renewal” (62 FR 25800, 25805). Instead, the NRC stated that it expects that the focus of the review would be on changes to the design that are proposed by the applicant and insights from relevant operating experience with the certified design or other designs, or other material new information arising after the NRC staff’s review of the design certification. Furthermore, the standards in § 52.59(b) control the imposition of new requirements during the review of applications for renewal. When GEH applied to renew the U.S. ABWR DC, the NRC affirmed this position, reviewed only those aspects of the design that were amended or modified, and determined whether operating experience or other material new information indicated that additional changes to the design were necessary. The staff reviewed GEH’s proposed amendments and modifications to the design; the staff did not impose changes under 10 CFR 52.59(b).

On June 12, 2009, the NRC published a rule requiring applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft (74 FR 28111). By letter dated December 7, 2010, GEH submitted its application to renew the U.S. ABWR DC to the NRC, which included Revision 5 to the design control document. This revision includes a containment re-analysis amendment and the necessary changes to meet the requirements of § 50.150, “Aircraft impact assessment.” Revision 5 of the DCD also describes the aircraft impact assessment results and identifies and incorporates design features and functional capabilities to show, with reduced use of operator actions, that the reactor core remains cooled and spent fuel pool integrity is maintained.

In a letter dated July 20, 2012, the NRC identified proposed changes that were regulatory improvements or that could meet the criteria in § 52.59(b). The NRC suggested that GEH consider the recommendations contained in SECY-12-0025, “Proposed Orders and Requests for Information in Response to Lessons Learned from Japan’s March 11, 2011, Great Tohoku Earthquake and Tsunami,” dated February 17, 2012, addressing Recommendations 4.2, 7.1, and 9.3 from SECY-11-0093, “Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,” enclosure, “Recommendations

for Enhancing Reactor Safety in the 21st Century; The Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident report,” dated July 12, 2011. Subsequently, during the Mitigation of Beyond-Design-Basis Events rulemaking that resulted in § 50.155, “Mitigation of beyond-design-basis events,” the Commission decided not to impose mitigation strategies requirements on DCs.<sup>2</sup>

After the NRC’s July 20, 2012, letter to GEH, the NRC issued several requests for additional information to identify additional items or clarify the items communicated in the 2012 letter. By letter dated February 19, 2016, GEH submitted DCD, Revision 6, to incorporate changes to the U.S. ABWR DCD made in response to NRC’s 2012 letter and to the NRC’s requests for additional information. In addition, this revision transmitted corrections of typographical errors that were identified during document development, and other formatting changes. These corrections represent non-substantive changes that are editorial in nature. The NRC reviewed these typographical changes and determined that the changes do not affect the NRC’s findings in the final safety evaluation report for original certification and are acceptable. On December 20, 2019, the applicant submitted DCD, Revision 7, that incorporated the remaining changes provided in earlier responses to requests for additional information. The NRC reviewed DCD, Revision 7, against the changes proposed in responses to requests for additional information and noted that two short paragraphs were missing from Chapter 5. On March 16, 2020, the applicant resubmitted DCD, Revision 7, Chapter 5, including the previously missing paragraphs. To ensure that the public can reference a single ADAMS package for this document, the NRC copied the original DCD, Revision 7, ADAMS package, and replaced Chapter 5 with the corrected file. This corrected ADAMS package is the collection of DCD, Revision 7,

<sup>2</sup> In the Mitigation of Beyond-Design-Basis Events proposed rule regulatory analysis, dated October 2015, the Commission explained that its proposal to make the Mitigation of Beyond-Design-Basis Events rule inapplicable to existing DCs, which included the U.S. ABWR, was based on concluding that “[t]he issues that may be resolved in a DC and accorded issue finality may not include operational matters, such as the elements of the [Mitigation of Beyond-Design-Basis Events] proposed rule.” However, as discussed in SECY-19-0066, “Staff Review of NuScale Power’s Mitigation Strategy for Beyond-Design-Basis External Events,” the design certification can provide for finality under 10 CFR 52.63 and Section VI of appendix A to 10 CFR part 52 for the adequacy of the SSCs to perform their mitigation strategies functions, as analyzed in the FSAR.

chapters that the NRC has reviewed (ADAMS Accession No. ML20093K254). The NRC’s review is documented in Supplement 2 to NUREG-1503, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design.” This final rule certifies Revision 7 of the U.S. ABWR DCD as provided in ADAMS Accession No. ML20093K254.

In a letter dated June 9, 2016, Toshiba Corporation Energy Systems and Solutions Company (Toshiba) withdrew its application to renew the original U.S. ABWR design certification with its version of the U.S. ABWR design certification. The Toshiba ABWR was to incorporate the Toshiba-specific aircraft impact assessment amendment of the U.S. ABWR design certification, identified in the current appendix A to 10 CFR part 52 as the South Texas Project Nuclear Operating Company (STPNOC) DCD. The original U.S. ABWR design certification has expired, along with its STPNOC DCD aircraft impact assessment amendment, and Toshiba has withdrawn its renewal U.S. ABWR DC application; therefore, Toshiba’s STPNOC DCD with its Toshiba-specific aircraft impact assessment amendment is not considered to be a timely renewal as described in § 52.57(b).

In a letter dated June 22, 2018, the only U.S. ABWR combined license (COL) holder, Nuclear Innovation North America LLC, requested NRC approval to withdraw the COLs for South Texas Project, Units 3 and 4 (COLs NPF 97 and NPF 98). The NRC approved the termination of these COLs on July 12, 2018. Since the only COL or COL applicant who referenced the Toshiba STPNOC DCD has terminated its licenses, and no other license or application referenced the U.S. ABWR DC, the Toshiba STPNOC DCD no longer meets the requirement for validity beyond the date of expiration under § 52.55(b). Finally, GEH has not requested to renew the STPNOC amendment. For all these reasons, the NRC is not retaining the original DCD or the STPNOC DCD option in Appendix A to 10 CFR part 52. Instead, the NRC is replacing appendix A to 10 CFR part 52 with this final rule certifying the renewed GEH U.S. ABWR design, as explained in Section IV.

#### IV. Discussion

##### Final Safety Evaluation Report

The final safety evaluation report for the renewed U.S. ABWR standard design consists of (1) the original final safety evaluation report published in July 1994 (NUREG-1503, Volume 1—

Chapters 1 through 22 and Volume 2—Appendices); (2) NUREG–1503, Supplement 1, published in May 1997; and (3) NUREG–1503, Supplement 2, published in October 2020. NUREG–1503 and NUREG–1503, Supplement 1, document the staff’s review of the original certified DC.<sup>3</sup> NUREG–1503, Supplement 2, documents the NRC staff’s review of Revision 7 of the U.S. ABWR DCD. The original final safety evaluation report and its supplements are available as indicated in Section XVI, “Availability of Documents,” in this document.

#### U.S. ABWR DC Renewal Rule

The following discussion describes the purpose and key aspects of each section of the U.S. ABWR DC renewal rule. This rule is unique because it is the first DC renewal. In addition to the GEH U.S. ABWR design certification, the current appendix A to 10 CFR part 52 includes discussions related to the U.S. ABWR design certified for the STPNOC acting together with Toshiba. As described in Section III, “Background,” of this document, the NRC has terminated the COLs that relied on the U.S. ABWR design certification rule as amended, and Toshiba has withdrawn its U.S. ABWR DC renewal application. Therefore, the NRC believes that the best approach for this renewal is to completely replace appendix A to 10 CFR part 52 with this final rule certifying the renewed GEH U.S. ABWR design. There is no discussion of the removal of STPNOC/Toshiba specific parts of the existing appendix A to 10 CFR part 52. The U.S. ABWR DC renewal rule maintains the structure of existing DC rules, with certain modifications where necessary to account for differences in the U.S. ABWR design documentation, design features, and environmental assessment (including severe accident mitigation design alternatives). As a result, DC rules are standardized to the extent practical.

#### A. Introduction (Section I)

The purpose of Section I of appendix A to 10 CFR part 52 is to identify the standard design approved by this U.S. ABWR DC renewal final rule and the applicant for certification of the standard design. Identification of the DC

<sup>3</sup>NUREG–1948, “Final Safety Evaluation Report Related to the Aircraft Impact Amendment to the U.S. Advanced Boiling Water Reactor (ABWR) Design Certification,” which documents the staff evaluation of the U.S. ABWR DC amendment to comply with requirements in § 50.150, is inapplicable to this U.S. ABWR DC renewal rule because the renewal DCD, Revision 7, incorporates a different set of changes to comply with the requirements in §§ 50.150 and 52.59.

applicant is necessary to implement appendix A to 10 CFR part 52 for two reasons. First, § 52.63(c) identifies the DC applicant as a potential source for an applicant for a COL to obtain the generic DCD and supporting design information. If the COL applicant does not obtain the design information from the DC applicant, but instead uses a different entity, then the COL applicant must meet the requirements in § 52.73, “Relationship to other subparts.” Second, paragraph X.A.1 of this final rule requires that the identified DC applicant maintain the generic DCD throughout the time that appendix A to 10 CFR part 52 may be referenced.

#### B. Definitions (Section II)

The purpose of Section II of appendix A to 10 CFR part 52 is to define specific terminology with respect to this final DC rule. During development of the first two DC rules, the NRC decided that there would be both generic (master) design control documents maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant or licensee that references a certified standard design. This distinction is necessary in order to specify the relevant plant-specific requirements to applicants and licensees referencing appendix A to 10 CFR part 52. In order to facilitate the maintenance of the master design control documents, the NRC requires that each application for a standard design certification be updated to include an electronic copy of the final version of the DCD. The final version is required to incorporate all amendments to the DCD submitted since the original application, as well as any changes directed by the NRC as a result of its review of the original DCD or as a result of any public input that the staff determined was valid. In the case of the U.S. ABWR DC renewal, there was no significant public participation in the staff review. This final version is the master DCD incorporated by reference in the design certification rule. The master DCD will be revised as needed to include generic changes to the version of the DCD that is approved in this design certification final rule. These changes would occur as the result of generic rulemaking by the NRC, under the change criteria in Section VIII of appendix A to 10 CFR part 52.

The NRC also requires each applicant and licensee referencing appendix A to 10 CFR part 52 to submit and maintain a plant-specific DCD as part of the COL final safety analysis report. This plant-specific DCD must either include or incorporate by reference the information

in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the NRC may adopt through rulemaking, plant-specific departures from the generic DCD that the NRC imposed on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in Section VIII. Therefore, the plant-specific DCD functions similarly to an updated final safety analysis report because it provides the most complete and accurate information on a plant’s design basis for that part of the plant that would be within the scope of appendix A to 10 CFR part 52.

The NRC is treating the technical specifications in Chapter 16, “Technical Specifications,” of the generic DCD as a special category of information and designating them as generic technical specifications in order to facilitate the special treatment of this information under appendix A to 10 CFR part 52. A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified as specified in paragraph VIII.C, and the remaining site-specific information needed to complete the technical specifications. The final safety analysis report that is required by § 52.79, “Contents of applications; technical information in final safety analysis report,” will consist of the plant-specific DCD, the site-specific final safety analysis report, and the plant-specific technical specifications.

The terms Tier 1, Tier 2, and Tier 2\* are defined, and the term COL action items (COL license information) is described in appendix A to 10 CFR part 52 because these concepts were not envisioned when 10 CFR part 52 was developed. The DC applicants and the NRC use these terms in implementing the two-tiered rule structure (the DCD is divided into Tiers 1 and 2 to support the rule structure) that was proposed by representatives of the nuclear industry after publication of 10 CFR part 52. The Commission approved the use of a two-tiered rule structure in its staff requirements memorandum, dated February 15, 1991, on SECY–90–377, “Requirements for Design Certification under 10 CFR part 52,” dated November 8, 1990.

Tier 1 information means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix. Tier 2 information means the portion of the design-related information contained in the generic DCD that is approved but not certified

by this appendix. The change process for Tier 2 information is similar to, but not identical to, the change process set forth in § 50.59, “Changes, tests, and experiments.” The regulations in § 50.59 describe when a licensee may make changes to a plant as described in its final safety analysis report without a license amendment. Because the change process for Tier 2 information provided in Section VIII of this appendix provides more specific criteria than § 50.59, as described in § 50.59(c)(4), the definitions and criteria of § 50.59 are not applicable to this process.

Certain Tier 2 information has been designated in the generic DCD with brackets, italicized text, and an asterisk as “Tier 2\*” information and a plant-specific departure from Tier 2\* information requires prior NRC approval (refer to Section IV.H of this document). However, the Tier 2\* designation expires for some of this information when the facility first achieves full power after the finding required by § 52.103(g). The process for changing Tier 2\* information and the time at which its status at Tier 2\* expires is set forth in paragraph VIII.B.6 of this appendix. Some Tier 2\* requirements concerning special preoperational tests are designated to be performed only for the first plant or first three plants referencing the U.S. ABWR DC renewal rule. The Tier 2\* designation for these selected tests will expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant.

The NRC is including a definition for a “*Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses*” in paragraph II.G of this appendix, so that the eight criteria in paragraph VIII.B.5.b will be implemented for new reactors as intended.

### C. Scope and Contents (Section III)

The purpose of Section III of appendix A to 10 CFR part 52 is to describe and define the scope and content of this design certification, explain how to obtain a copy of the generic DCD, identify requirements for incorporation by reference of the U.S. ABWR DC renewal final rule, and set forth how documentation discrepancies or inconsistencies are to be resolved.

Paragraph III.A is the required statement of the Office of the Federal Register for approval of the

incorporation by reference of the U.S. ABWR DCD, Revision 7, which includes a late correction to Tier 2, Chapter 5. In addition, this paragraph provides the information on how to obtain a copy of the DCD.

Paragraph III.B is the requirement for COL applicants and licensees referencing the U.S. ABWR DCD to comply with the requirements of this appendix in order to benefit from the issue finality afforded the certified design. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the *Code of Federal Regulations*. This material, like any other properly issued regulation, has the force and effect of law. Tier 1 and Tier 2 information and generic technical specifications have been combined into a single document called the generic DCD, in order to effectively control this information and facilitate its incorporation by reference into the final rule. In addition, paragraph III.B clarifies that the conceptual design information and GEH’s evaluation of severe accident mitigation design alternatives as described in the “Technical Support Document for the ABWR” are not part of appendix A to 10 CFR part 52. As provided by § 52.47(a)(24), these conceptual designs are not part of appendix A to 10 CFR part 52 and, therefore, are not applicable to an application that references appendix A to 10 CFR part 52. Therefore, an applicant referencing appendix A to 10 CFR part 52 would not be required to conform to the conceptual design information that was provided by the DC applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the DC review. Similarly, the severe accident mitigation design alternatives were required to facilitate the environmental assessment.

Paragraphs III.C and III.D set forth the manner by which potential conflicts are to be resolved and identify the controlling document. Paragraph III.C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the final safety evaluation report for the certified standard design.

Paragraph III.E makes it clear that design activities outside the scope of the DC may be performed using actual site characteristics, provided that the design activities do not affect the DCD or conflict with the interface requirements. This provision applies to site-specific

portions of the plant, such as the administration building.

### D. Additional Requirements and Restrictions (Section IV)

Section IV of appendix A to 10 CFR part 52 sets forth additional requirements and restrictions imposed upon an applicant who references appendix A to 10 CFR part 52.

Paragraph IV.A sets forth the information requirements for COL applicants and distinguishes between information and documents that must be *included* in the application or the design control document and those which may be *incorporated by reference*. Any incorporation by reference in the application should be clear and should specify the title, date, edition or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated. The legal effect of such an incorporation by reference into the application is that appendix A to 10 CFR part 52 would be legally binding on the applicant or licensee.

In paragraph IV.B the NRC reserves the right to determine how appendix A to 10 CFR part 52 may be referenced under 10 CFR part 50, “Domestic licensing of production and utilization facilities.” This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this DC rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous DC rules were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was issued. The NRC’s concern is with the manner by which the inspections, tests, analyses, and acceptance criteria (ITAAC) were developed and the lack of experience with DCs in a licensing proceeding. Therefore, it is appropriate that the NRC retain some discretion regarding the manner by which appendix A to 10 CFR part 52 could be referenced in a 10 CFR part 50 licensing proceeding.

### E. Applicable Regulations (Section V)

The purpose of Section V of appendix A to 10 CFR part 52 is to specify the regulations that are applicable and in effect for the U.S. ABWR DC renewal. These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that are not applicable to this certified design.

#### F. Issue Resolution (Section VI)

The purpose of Section VI of appendix A to 10 CFR part 52 is to identify the scope of issues that are resolved by the NRC through this final rule and, therefore, are “matters resolved” within the meaning and intent of § 52.63(a)(5). The section is divided into five parts: Paragraph VI.A identifies the NRC’s safety findings in adopting appendix A to 10 CFR part 52, paragraph VI.B identifies the scope and nature of issues that are resolved by this final rule, paragraph VI.C identifies issues that are not resolved by this final rule, paragraph VI.D identifies the issue finality restrictions applicable to the NRC with respect to appendix A to 10 CFR part 52, and paragraph VI.E identifies the availability of secondary resources.

Paragraph VI.A describes the nature of the NRC’s findings in general terms and makes the findings required by § 52.54, “Issuance of standard design certification,” for the NRC’s approval of this DC final rule.

Paragraph VI.B sets forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph VI.B clarifies that issue resolution, as described in the remainder of the paragraph, extends to the delineated NRC proceedings for plants referencing appendix A to 10 CFR part 52. The remainder of paragraph VI.B describes the categories of information for which there is issue resolution.

Paragraph VI.C reserves the right of the NRC to impose operational requirements on applicants that reference appendix A to 10 CFR part 52. This provision reflects the fact that only some operational requirements, including portions of the generic technical specifications in Chapter 16 of the DCD, and no operational programs (e.g., operational quality assurance), were completely reviewed by the NRC in this DC final rule. However, those operational requirements that the NRC completely reviewed and approved as documented in the NRC’s final safety evaluation report, are subject to the change control provisions of paragraph VIII.C. The NRC notes that operational requirements may be imposed on licensees referencing this DC through the inclusion of license conditions in the license, or established by a COL applicant or license holder through the inclusion with sufficient specificity of a description of the operational requirement in the plant-specific final

safety analysis report.<sup>4</sup> The NRC’s choice of the regulatory vehicle for imposing the operational requirements will depend upon the following, among other things: (1) Whether the development and/or implementation of these requirements must occur prior to either the issuance of the COL or the Commission finding under § 52.103(g) and (2) the nature of the change controls that are appropriate given the regulatory, safety, and security significance of each operational requirement.

Also, paragraph VI.C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this DC. License conditions for portions of the plant within the scope of this DC (e.g., start-up and power ascension testing) are not restricted by § 52.63. The requirement to perform these testing programs is contained in the Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the NRC is reserving the right to impose, at the time of COL issuance, license conditions addressing post-fuel load verification activities for portions of the plant within the scope of this DC.

Paragraph VI.D requires the NRC to follow the restrictions contained in Section VIII of appendix A to 10 CFR part 52 when requiring generic or plant-specific modifications, changes, or additions to structures, systems, and components; design features; design criteria; and ITAAC within the scope of the certified design.

Paragraph VI.E provides that the NRC will specify at an appropriate time the procedures on how to obtain access to sensitive unclassified and non-safeguards information (SUNSI) and safeguards information (SGI) for the U.S. ABWR DC renewal rule. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as hearings required by § 52.85, “Administrative review of applications; hearings,” or an adjudicatory hearing.

<sup>4</sup> Certain activities ordinarily conducted following fuel load and therefore considered “operational requirements,” but which may be relied upon to support a Commission finding under § 52.103(g), may themselves be the subject of ITAAC to ensure implementation prior to the § 52.103(g) finding.

#### G. Duration of This Appendix (Section VII)

The purpose of Section VII of appendix A to 10 CFR part 52 is, in part, to specify the period during which this design certification may be referenced by an applicant or licensee for a COL, under § 52.55, “Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses,” and the period it will remain valid when the DC is referenced. For example, if a COL application references this DC during the 15-year period, then the DC would be effective for that COL application until that COL application is withdrawn or the license issued on that COL application expires, including periods of operation under a renewed license. The NRC intends for appendix A to 10 CFR part 52 to remain valid for the life of the plants that reference the DC to achieve the benefits of standardization and licensing stability. This means that changes to, or plant-specific departures from, information in the plant-specific DCD must be made under the change processes in Section VIII for the life of a plant that references this DC rule.

#### H. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII of appendix A to 10 CFR part 52 is to set forth the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The NRC adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference DC rules. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and operational requirements.

Generic changes (called “modifications” in § 52.63(a)(3)) must be accomplished by rulemaking because the intended subject of the change is this DC final rule itself, as is contemplated by § 52.63(a)(1). Consistent with § 52.63(a)(3), any generic rulemaking changes are applicable to all plants referencing this DC rule, absent circumstances which render the change technically irrelevant. By contrast, plant-specific departures could be either required by an order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant’s or licensee’s plant(s), similar to a § 50.59 departure or an exemption. Because these plant-specific departures result in a DCD that is unique for that plant, Section X of appendix A to 10 CFR part 52 requires an applicant or licensee to maintain a plant-specific

DCD. For purposes of brevity, the following discussion refers to the processes for both generic changes and plant-specific departures as “change processes.” Section VIII refers to an exemption from one or more requirements of this appendix and addresses the criteria for granting an exemption. The NRC cautions that when the exemption involves an underlying substantive requirement (*i.e.*, a requirement outside this appendix), then the applicant or licensee requesting the exemption must demonstrate that an exemption from the underlying applicable requirement meets the criteria of § 52.7, “Specific exemptions,” or § 50.12, “Specific exemptions.”

Tier 1 information is the portion of design-related information in the generic DCD that the NRC approves in the 10 CFR part 52 design certification appendices. Tier 1 information can only be changed with NRC approval by rulemaking, approval of an exemption from the certified design rule, or required by the Commission through a plant-specific order. Tier 2 information also is approved by the NRC in the 10 CFR part 52 design certification rule appendices, but it is not certified and licensees who reference the design can change this information using the process outlined in Section VIII of the appendices. This change process is similar to that in § 50.59 and is generally referred to as the “§ 50.59-like” process. If the criteria in Section VIII are met, a licensee can change Tier 2 information without prior NRC approval. The NRC created a third category, Tier 2\*, to address industry requests to minimize the scope of Tier 1 information and provide greater flexibility for making changes. Tier 2\* information is included in Tier 2 and has the same safety significance as Tier 1 information, but the NRC decided to provide more flexibility for licensees to change this type of information. Tier 2\* is significant information that cannot be changed without prior NRC approval of a license amendment requesting the change. Paragraph VIII.B.6 of appendix A to 10 CFR part 52 sets forth the process for changing Tier 2\* information.

#### Tier 1 Information

Paragraph VIII.A describes the change process for changes to Tier 1 information that are accomplished by rulemakings that amend the generic DCD and are governed by the standards in § 52.63(a)(1). A generic change under § 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with NRC regulations

applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or the common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve select design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. The rulemakings must provide for notice and opportunity for public comment on the proposed change, under § 52.63(a)(2). The NRC will give consideration as to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration except for those changes that are necessary to provide adequate protection of the public health and safety or the common defense and security.

Departures from Tier 1 may occur in two ways: (1) The NRC may order a licensee to depart from Tier 1, as provided in paragraph VIII.A.3, or (2) an applicant or licensee may request an exemption from Tier 1, as addressed in paragraph VIII.A.4. If the NRC seeks to order a licensee to depart from Tier 1, paragraph VIII.A.3 would require that the NRC find both that the departure is necessary either to assure adequate protection of the public health and safety or the common defense and security or to bring the certification into compliance with the NRC's regulations applicable and in effect at the time of approval of the DC and that special circumstances are present, taking into consideration whether the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order. Paragraph VIII.A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of §§ 52.63(b)(1) and 52.98(f), which provide an opportunity for a hearing. In addition, the NRC would not grant requests for exemptions that will result in a significant decrease in the level of safety otherwise provided by the design.

#### Tier 2 Information

Paragraph VIII.B describes the change processes for the Tier 2 information; which have the same elements as the

Tier 1 change process, but some of the standards for plant-specific orders and exemptions would be different. Generic Tier 2 changes would be accomplished by rulemaking that would amend the generic DCD and would be governed by the standards in § 52.63(a)(1). A generic change under § 52.63(a)(1) would not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with NRC regulations that were applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or the common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security; (4) provides the detailed design information necessary to resolve select design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information.

Departures from Tier 2 would occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph VIII.B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph VIII.B.4; (3) a licensee may make a departure without prior NRC approval under paragraph VIII.B.5; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph VIII.B.5 as provided in paragraph VIII.B.5.e; and (5) the licensee may request NRC approval for a departure from Tier 2\* information under paragraph VIII.B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except when necessary, either to bring the certification into compliance with the NRC's regulations applicable and in effect at the time of approval of the DC or to ensure adequate protection of the public health and safety or the common defense and security, provided that special circumstances are present as set forth in paragraph VIII.B.3. However, unlike in the case of Tier 1 departures, the Commission would not have to consider whether the special circumstances for the Tier 2 departures would outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by § 52.63(a)(4). The NRC has determined

that it is not necessary to impose an additional limitation for standardization similar to that imposed on Tier 1 departures by § 52.63(a)(4) and (b)(1) because it would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee referencing this DC rule may request an exemption from Tier 2 information as set forth in paragraph VIII.B.4. The applicant or licensee would have to demonstrate that the exemption complies with one of the special circumstances in regulations governing specific exemptions in § 50.12(a). In addition, the NRC would not grant requests for exemptions that would result in a significant decrease in the level of safety otherwise provided by the design. However, unlike Tier 1 changes, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption would be subject to litigation in the same manner as other issues in the licensing hearing, consistent with § 52.63(b)(1). If the exemption is requested by a licensee, then the exemption would be subject to an opportunity for hearing in the same manner as license amendments.

Paragraph VIII.B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the departure does not involve a change to or departure from Tier 1 information, Tier 2\* information, or the technical specifications, and the departure does not require a license amendment under paragraph VIII.B.5.b or c. The technical specifications referred to in B.5.a of this paragraph are the technical specifications in Chapter 16 of the generic DCD, including bases, for departures made prior to the issuance of the COL. After the issuance of the COL, the plant-specific technical specifications would be controlling under paragraph VIII.B.5. The requirement for a license amendment in paragraph VIII.B.5.b is similar to the requirement in § 50.59 and applies to all of the information in Tier 2 except for the information that resolves the severe accident issues or that affects information required by § 52.47(a)(28) to address aircraft impacts.

The NRC concludes that the resolution of ex-vessel severe accident design features should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY-90-377, "Requirements for Design Certification

Under 10 CFR part 52," dated February 15, 1991, ADAMS Accession No. ML003707892). However, because of the increased uncertainty in ex-vessel severe accident issue resolutions, the NRC has adopted separate criteria in paragraph VIII.B.5.c for determining if a departure from information that resolves ex-vessel severe accident design features would require a license amendment. For purposes of applying the special criteria in paragraph VIII.B.5.c, ex-vessel severe accident resolutions are limited to design features where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel, and the containment is being challenged. These design features are identified in Section 19E of the DCD but may be described in other sections of the DCD. The location of design information in the DCD is not important to the application of this special procedure for ex-vessel severe accident design features. However, the special procedure in paragraph VIII.B.5.c does not apply to design features that resolve "beyond-design-basis accidents" or other low-probability events. The important aspect of this special procedure is that it is limited to ex-vessel severe accident design features, as defined above. Some design features may have intended functions to meet "design-basis" requirements and to resolve "ex-vessel severe accidents." If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraph VIII.B.5.b or VIII.B.5.c are selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under paragraph VIII.B.5, is required to prepare an evaluation that provides the bases for the determination that the proposed change does not require a license amendment or involve a change to Tier 1 or Tier 2\* information, or a change to the TS, as explained above. In order to achieve the NRC's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review. The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, DBAs, and

severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information, which is intended to be treated as a requirement, is contained in the secondary references. The evaluation should consider the tables in Sections 14.3 and 19.8 of the generic DCD to ensure that the proposed change does not impact Tier 1 information. These tables contain cross-references from the safety analyses in Tier 2 to the important parameters that were included in Tier 1.

Paragraph VIII.B.5.d addresses information described in the DCD to address aircraft impacts, under § 52.47(a)(28). Under § 52.47(a)(28), applicants are required to include the information required by § 50.150(b) in their DCD. A COL applicant or licensee that departs from this information is required to consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by § 50.150(a). The applicant or licensee is also required to describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the assessment requirements in § 50.150(a)(1). Submittal of this updated information is governed by the reporting requirements in paragraph X.B.

During an ongoing adjudicatory proceeding (e.g., for issuance of a COL) a party who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information may petition to admit such a contention into the proceeding under paragraph VIII.B.5.g. As set forth in paragraph VIII.B.5.g, the petition would have to comply with the requirements of § 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions," and show that the departure does not comply with paragraph VIII.B.5. If on the basis of the petition and any responses thereto, the presiding officer in the proceeding determines that the required showing has been made, the matter would be certified to the Commission for its final determination. In the absence of a proceeding, assertions of noncompliance with paragraph VIII.B.5 requirements applicable to Tier 2 departures would be treated as petitions for enforcement action under § 2.206, "Requests for action under this subpart."

Paragraph VIII.B.6 provides a process for departing from Tier 2\* information. The creation of and restrictions on changing Tier 2\* information resulted from the development of the Tier 1 information for the Advanced Boiling



Water Reactor design certification (appendix A to 10 CFR part 52) and the System 80+ design certification (appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes that were not specified in Tier 1 as acceptable for meeting ITAACs were specified in Tier 2. The result of these departures is that certain significant information exists only in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2\* information is identified in the generic DCD with brackets, italicized text, and an asterisk.

Although the Tier 2\* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2\* information could expire when the plant first achieves full (100 percent) power, after the finding required by 10 CFR 52.103(g), while other Tier 2\* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2\* information could expire after full power is first achieved (first full power) were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2\* information listed in paragraph VIII.B.6.c ceases to retain its Tier 2\* designation after full power operation is first achieved following the Commission finding under 10 CFR 52.103(g).

Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in paragraph VIII.B.5. By contrast, the Tier 2\* information identified in paragraph VIII.B.6.b retains its Tier 2\* designation throughout the duration of the license, including any period of license renewal.

If Tier 2\* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2\*, or 2) will also be determined in the rulemaking and the appropriate process for future changes will apply. If a plant-specific departure is made from Tier 2\* information, then the new designation will apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2\* information, the new information will be subject to litigation in the same manner as other plant-

specific issues in the licensing hearing. If a licensee makes a departure from Tier 2\* information, it will be treated as a license amendment under 10 CFR 50.90 and the finality will be determined under paragraph VI.B.5. Any requests for departures from Tier 2\* information that affects Tier 1 must also comply with the requirements in paragraph VIII.A.

#### Operational Requirements

The change process for technical specifications and other operational requirements in the design control document is set forth in Section VIII, paragraph C. The key to using the change processes described in Section VIII is to determine if the proposed change or departure would require a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B would apply. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C would apply. This change process has elements similar to the Tier 1 and Tier 2 change processes in paragraphs A and B, but with significantly different change standards. Because of the different finality status for technical specifications and other operational requirements, the NRC designated a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The language in paragraph VIII.C also distinguishes between generic (Chapter 16 of the DCD) and plant-specific technical specifications to account for the different treatment and finality consistent with technical specifications before and after a license is issued.

The process in paragraph VIII.C.1 for making generic changes to the generic technical specifications in Chapter 16 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in § 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in this DC rule is based upon the extent to which the NRC reached a safety conclusion in the final safety evaluation report on this matter. If a technical specification or operational requirement was completely reviewed and finalized in the design certification rulemaking, then the requirement of § 50.109 would apply because a position was taken on

that safety matter. Generic changes made under paragraph VIII.C.1 would be applicable to all applicants or licensees referencing this DC rule as described in paragraph VIII.C.2, unless the change is made technically irrelevant by a plant-specific departure or an exemption is requested.

Some generic technical specifications contain values in brackets [ ]. The brackets are placeholders indicating that the NRC has not reviewed these values and represent a requirement that the applicant for a COL referencing the U.S. ABWR DC renewal rule must replace the values in brackets with final plant-specific values (refer to guidance provided in Regulatory Guide 1.206, Revision 1, "Applications for Nuclear Power Plants"). The NRC will review the final plant-specific values when provided as part of a COL application referencing this design. The values in brackets are neither part of the DC rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications.

Plant-specific departures may occur by either an order under paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved for these processes would be the same as for paragraph VIII.C.1 previously discussed. If the technical specification or operational requirement is completely reviewed and finalized in the design certification rulemaking, then the NRC must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there would be no restriction on plant-specific changes to the technical specifications or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed and approved by the NRC in support of the design certification review, the NRC intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement contained in paragraph VIII.C.5 is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present pursuant to § 2.335, "Consideration of Commission rules and regulations in adjudicatory proceedings."



Paragraph VIII.C.6 states that the generic technical specifications would have no further effect on the plant-specific technical specifications after the issuance of a license that references this appendix. After a license is issued, the bases for the plant-specific technical specifications would be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

#### *I. [RESERVED] (Section IX)*

This section is reserved for future use. The matters discussed in this section of earlier design certification rules—inspections, tests, analyses, and acceptance criteria—are now addressed in the substantive provisions of 10 CFR part 52. Accordingly, there is no need to repeat these regulatory provisions in the U.S. ABWR DC renewal rule. However, this section is being reserved to maintain consistent section numbering with other design certification rules.

#### *J. Records and Reporting (Section X)*

The purpose of Section X of appendix A to 10 CFR part 52 is to set forth the requirements that will apply to maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of appendix A to 10 CFR part 52 is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 requires that a generic design control document including SUNSI and SGI referenced in the generic design control document be maintained by the applicant for this rule. The generic DCD concept was developed, in part, to meet the requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the SUNSI and SGI could not be included in the generic design control document because they are not publicly available. Nonetheless, the SUNSI and SGI were reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC would consider the information to be resolved within the meaning of § 52.63(a)(5). Because this information is not in the generic DCD, this information, or its equivalent, is required to be provided by an applicant for a license referencing this U.S. ABWR DC renewal rule. Only the generic DCD is identified and incorporated by reference into this rule. The generic

design control document and the NRC-approved version of the SUNSI and SGI must be maintained by the applicant (GEH) for the period of time that appendix A to 10 CFR part 52 may be referenced.

Paragraphs X.A.2 and X.A.3 place recordkeeping requirements on an applicant or licensee that references this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII. The term “plant-specific” is used in paragraph X.A.2 and other sections of appendix A to 10 CFR part 52 to distinguish between the generic DCD that is being incorporated by reference into appendix A to 10 CFR part 52, and the plant-specific DCD that the COL applicant is required to submit under paragraph IV.A. The requirement to maintain changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic design control document, which will be maintained by the applicant for the design certification, but also in the plant-specific DCD. Therefore, records of generic changes to the design control document will be required to be maintained by both entities to ensure that both entities have up-to-date design control documents.

Paragraph X.A.4.a requires the U.S. ABWR DC rule applicant to maintain a copy of the aircraft impact assessment analysis for the term of the certification and any renewal. This provision, which is consistent with § 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct. Similarly, paragraph X.A.4.b requires an applicant or licensee who references appendix A to 10 CFR part 52 to maintain a copy of the aircraft impact assessment performed to comply with the requirements of § 50.150(a) throughout the pendency of the application and for the term of the license and any renewal. This provision is consistent with § 50.150(c)(4). For all applicants and licensees, the supporting documentation retained should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in § 50.150(a)(1) will be met.

Paragraph X.A does not place recordkeeping requirements on site-specific information that is outside the scope of this rule. As discussed in paragraph IV.B of this document, the final safety analysis report required by § 52.79 will contain the plant specific DCD and the site-specific information for a facility that references this rule.

The phrase “site-specific portion of the final safety analysis report” in paragraph X.B.3.c refers to the information that is contained in the final safety analysis report for a facility (required by § 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule because the plant-specific DCD is part of the final safety analysis report for the facility.

Paragraph X.B.1 requires applicants or licensees that reference this rule to submit reports that describe departures from the design control document and include a summary of the written evaluations. The requirement for the written evaluations is set forth in paragraph X.A.3. The frequency of the report submittals is set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations is similar to the requirement in § 50.59(d)(2).

Paragraph X.B.2 requires applicants or licensees that reference this rule to submit updates to the design control document, which include both generic changes and plant-specific departures, as set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting reports will vary according to certain time periods during a facility’s lifetime. If a potential applicant for a COL that references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph X.B.3.a will require that the updated design control document be submitted as part of the initial application for a license. Under paragraph X.B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year.

Paragraph X.B.3.b also requires semi-annual submission of the reports required by paragraph X.B.1 and X.B.2 throughout the period of application review and construction. The NRC will use the information in the reports to support planning for the NRC’s inspection and oversight during this phase, when the licensee is conducting detailed design, procurement of components and equipment, construction, and preoperational testing. In addition, the NRC will use the information in making its finding on ITAAC under § 52.103(g), as well as any finding on interim operation under Section 189.a(1)(B)(iii) of the Atomic Energy Act of 1954, as amended. Once a facility begins operation (for a COL

under 10 CFR part 52, after the Commission has made a finding under § 52.103(g), the frequency of reporting will be governed by the requirements in paragraph X.B.3.c.

#### V. ABWR Final Design Approval

On July 13, 1994, the NRC issued a final design approval for the U.S. ABWR design under appendix O to 10 CFR part 52, “Standardization of design: staff review of standard designs”; the approval was published in the **Federal Register** on July 20, 1994 (59 FR 37058). The final design approval was scheduled to expire on July 13, 1999. On November 23, 1994, the NRC issued a revised final design approval under appendix O to 10 CFR part 52, which expired on July 13, 2009. On December 1, 1994, the NRC published the revised final design approval for U.S. ABWR standard design (59 FR 61647). On August 28, 2007, the NRC replaced appendix O of 10 CFR part 52 with Subpart E of 10 CFR part 52, “Standard design approvals,” thereby replacing a final design approval with a standard design approval (72 FR 49351). As discussed in the statements of consideration for the 2007 rulemaking, a renewal process was not specifically provided for either a final design approval or standard design approval. The issued final design approval has expired, a renewal was neither requested nor available, nor is there a standard design approval being sought concurrent with this U.S. ABWR DC renewal rule. Therefore, the U.S. ABWR design does not have a current final design approval or standard design approval.

#### VI. Section-by-Section Analysis

The following paragraphs describe the specific changes in this direct final rule:

##### *Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor*

This direct final rule amends appendix A to 10 CFR part 52 to incorporate the renewed U.S. ABWR standard design into the NRC’s regulations. Applicants or licensees intending to construct and operate a plant using the U.S. ABWR design may do so by referencing the DC rule.

#### VII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants. The companies that own

these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

#### VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this direct final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are NRC approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses or construction permits. Furthermore, an applicant for a design certification, rather than the NRC, initiates design certification rulemakings. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant, rather than the NRC. For these reasons, the NRC concludes that preparation of a regulatory analysis is neither required nor appropriate.

#### IX. Backfitting and Issue Finality

The NRC has determined that this direct final rule does not constitute a backfit as defined in the backfit rule (§ 50.109), and it is not inconsistent with any applicable issue finality provision in 10 CFR part 52.

This U.S. ABWR DC renewal rule does not constitute backfitting as defined in the backfit rule (§ 50.109) because there are no existing operating licenses under 10 CFR part 50, or COLs or manufacturing licenses under 10 CFR part 52 referencing this DC rule and because no current final design approval or standard design approval exists for the U.S. ABWR.

This U.S. ABWR DC renewal rule is not inconsistent with any applicable issue finality provision in 10 CFR part 52 because it does not impose new or changed requirements on existing DC rules in appendices B through F to 10 CFR part 52 and there are no COLs or manufacturing licenses issued by the NRC that reference the original U.S. ABWR DC rule. Conforming changes appear in appendix A to 10 CFR part 52 to reflect the renewed standard design in place of the original U.S. ABWR DC; however, these changes do not impose any additional requirements.

For these reasons, neither a backfit analysis nor a discussion addressing the

issue finality provisions in 10 CFR part 52 was prepared for this rule.

#### X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC certifies the renewal for the U.S. ABWR standard design for use in nuclear power plant licensing under 10 CFR part 50 or 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### XI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

#### XII. Environmental Assessment and Final Finding of No Significant Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC’s regulations in subpart A of 10 CFR part 51, that this direct final rule, if confirmed, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC’s generic determination in this regard, reflected in § 51.32(b)(1), is based upon the following considerations. A DC rule does not authorize the siting, construction, or operation of a facility referencing any particular design, but only codifies a standard design certification in a rule (the U.S. ABWR DC renewal in this case). The NRC will evaluate the environmental impacts and issue an environmental impact

statement as appropriate under NEPA as part of the application for the construction and operation of a facility referencing any particular DC rule.

However, consistent with § 51.30(d) and § 51.31(b), the NRC has prepared an environmental assessment, “Environmental Assessment by the U.S. Nuclear Regulatory Commission Relating to Renewal of the Certification of the ABWR Standard Design,” for the U.S. ABWR design renewal addressing various design alternatives to prevent and mitigate severe accidents. The environmental assessment is based, in part, upon the NRC’s review of GEH’s supplemental evaluation of various severe accident mitigation design alternatives to prevent and mitigate severe accidents required in “Amendment to Technical Support Document for the ABWR,” which updates information in the original “Technical Support Document for the ABWR.” Based upon review of GEH’s evaluation, the Commission concludes that (1) GEH identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the U.S. ABWR design renewal; (2) none of the potential design alternatives are justified on the basis of cost-benefit considerations; and (3) it is unlikely that other design changes would be identified and justified during the term of the design certification on the basis of cost-benefit considerations because the estimated core damage frequencies for the U.S. ABWR are very low on an absolute scale. These issues are considered resolved for the U.S. ABWR design. Based on its own independent evaluation, the NRC reached the same conclusion as GEH that none of the possible candidate design alternatives are potentially cost beneficial for the U.S. ABWR design. This independent evaluation was based on reasonable treatment of costs, benefits, and sensitivities. The NRC concludes that GEH has adequately identified areas where risk potentially could be reduced in a cost-beneficial manner and

adequately assessed whether the implementation of the identified potential severe accident mitigation design alternatives or candidate design alternatives would be cost beneficial for the given evaluation criteria as provided in the U.S. ABWR DC renewal environmental assessment.

The finality of all environmental issues concerning severe accident mitigation design alternatives in the current U.S. ABWR design certification rule relied on site parameters being within those specified in the technical support document for the original U.S. ABWR, dated December 1994 as amended November 30, 2010. However, in an Atomic Safety and Licensing Board memorandum and order in the South Texas Project Electric Generating Station Units 3 and 4 Combined License proceeding (LBP–11–07), the board determined that no list of site parameters was specified in the U.S. ABWR technical support document. Therefore, the NRC staff re-evaluated the criteria for determining whether finality for severe accident mitigation design alternatives should apply in a future U.S. ABWR licensing action. To this end, the NRC staff selected the criteria for finality as the averted risk person-rem value for each severe accident mitigation design alternative provided in Table 5 of the original technical support document. Although finality criteria for the severe accident mitigation design alternative for this DC renewal action cannot be based on site parameters, the selected criteria, if met, provide assurance that a severe accident mitigation design alternative would still not be cost beneficial at a proposed site for the U.S. ABWR design. Therefore, the NRC finds that the evaluation performed by GEH is reasonable and sufficient.

The environmental assessment is available as indicated in Section XVI, “Availability of Documents.”

**XIII. Paperwork Reduction Act Statement**

This final rule does not contain any new or amended collections of

information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, control number 3150–0151.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

**XIV. Congressional Review Act**

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

**XV. Agreement State Compatibility**

Under the “Policy Statement on Adequacy and Compatibility of Agreement States Programs,” approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with a particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

**XVI. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

**DOCUMENTS RELATED TO U.S. ABWR DESIGN CERTIFICATION RENEWAL RULE**

Document	ADAMS Accession No./ Federal Register citation
SECY–20–0112, “Direct Final Rule—Advanced Boiling Water Reactor Design Certification Renewal (RIN 3150–AK04; NRC–2017–0090),” December 9, 2020.	ML20170A520
GE-Hitachi ABWR Design Control Document Tier 1 & 2, Revision 7, October 2019 (includes correction noted, as of March 2020).	ML20093K254
GE-Hitachi Nuclear Energy, Transmittal of ABWR Standard Plant Design Certification Renewal Application Design Control Document, Revision 5, Tier 1 and Tier 2, December 7, 2010.	ML110040176
GE-Hitachi ABWR Design Control Document Tier 1 & 2, Revision 5, December 7, 2010 .....	ML110040323
Technical Report NEDO–33875, ABWR U.S. Certified Design—Aircraft Impact Assessment, Licensing Basis Information and Design Details for Key Design Features, Rev. 3 (M170049), February 2017.	ML17059C523

## DOCUMENTS RELATED TO U.S. ABWR DESIGN CERTIFICATION RENEWAL RULE—Continued

Document	ADAMS Accession No./ Federal Register citation
Licensing Technical Report NEDO-33878, ABWR ECCS Suction Strainer Evaluation of Long-Term Recirculation Capability, Rev. 3 (M180068), March 2018.	ML18092A306
<b>Final Safety Evaluation Report and Supplements</b>	
NUREG-1503, Supplement 2, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design," October 2020.	ML20301A886
NUREG-1503, Supplement 1, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design," May 1997.	ML080710134
NUREG-1503, Vols. 1-2, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design," July 1994.	ML080670592
<b>Environmental Review</b>	
Environmental Assessment by the U.S. Nuclear Regulatory Commission Relating to Renewal of the Certification of the ABWR Standard Design, June 2021.	ML21147A381
Staff Technical Analysis in Support of the Advanced Boiling Water Reactor Design Certification Renewal Environmental Assessment.	ML20024D602
MFN 16-062, "Applicant's Supplemental Environmental Report—Amendment to Standard Design Certification (ABWR Renewal Docket 52-045)," August 2016.	ML16235A415
25A5680AA, "Amendment to Technical Support Document for the ABWR," Sheet 1, November 30, 2010 (Renewal Application).	ML110040178
SECY-97-077, "Certification of Two Evolutionary Designs," April 15, 1996 (Original ABWR Environmental Assessment).	ML003708129
Letter from GE Nuclear Energy Submitting the Enclosed "Technical Support Document for the ABWR," December 21, 1994 (Original NEPA/SAMDA Submittal).	ML100210563
<b>Commission Papers, Original Design Certification, Interim Rule Amendments, and Other Supporting Documents</b>	
SECY-19-0066, "Staff Review of NuScale Power's Mitigation Strategy for Beyond-Design-Basis External Events," June 26, 2019.	ML19148A443
SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami," February 17, 2012.	ML12039A111
SECY-11-0093, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," July 12, 2011.	ML11186A950
The Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident, July 12, 2011 .....	ML111861807
Staff Requirements Memorandum on SECY-90-377, "Requirements for Design Certification Under 10 CFR Part 52," February 15, 1991.	ML003707892
SECY-90-377, "Requirements for Design Certification under 10 CFR Part 52," November 8, 1990 .....	ML003707889
NUREG-1948, "Final Safety Evaluation Report Related to the Aircraft Impact Amendment to the U.S. Advanced Boiling Water Reactor (ABWR) Design Certification," June 2011.	ML11182A163
U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment, December 16, 2011 .....	76 FR 78096
LBP-11-07, Atomic Safety and Licensing Board Memorandum and Order in the South Texas Project Electric Generating Station Units 3 and 4 Combined License Proceeding, February 28, 2011.	ML110591049
GE Hitachi Nuclear Energy; Acceptance for Docketing of an Application for Renewal of the U.S. Advanced Boiling Water Reactor Design Certification, February 18, 2011 (Acceptance Application).	76 FR 9612
GE Hitachi Nuclear Energy; Notice of Receipt and Availability of an Application for Renewal of the U.S. Advanced Boiling Water Reactor Design Certification, January 27, 2011 (Notice of Receipt of the Application).	76 FR 4948
ABWR-LIC-09-621, Revision 0, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," November 2009.	ML093170455
Consideration of Aircraft Impacts for New Nuclear Power Reactors, June 12, 2009 .....	74 FR 28111
Licenses, Certifications, and Approvals for Nuclear Power Plants, August 28, 2007 (Revision of 10 CFR Parts 50 and 52).	72 FR 49351
Presidential Memorandum, "Plain Language in Government Writing," June 10, 1998 .....	63 FR 31883
Policy Statement on Adequacy and Compatibility of Agreement States Programs, September 3, 1997 .....	62 FR 46517
Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design, May 12, 1997 (Original U.S. ABWR Design Certification).	62 FR 25800
GE-Hitachi Nuclear Energy, Transmittal of ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 7, Chapter 5, March 16, 2020.	ML20076D961
GE-Hitachi Nuclear Energy—ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 7, Tier 1 and Tier 2, December 20, 2019.	ML20007E274
GE-Hitachi Nuclear Energy, Submittal of ABWR Standard Plant Design Certification Renewal Application Design Control, Document, Revision 6, Tier 1 and Tier 2, February 19, 2016.	ML16081A268
GE-Hitachi Nuclear Energy—ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 6, Tier 1 and Tier 2, February 19, 2016.	ML16214A015
Mitigation of Beyond-Design-Basis Events (MBDBE)—Regulatory Analysis—Proposed Rule Post-SRM, October 2015.	ML15266A133
Letter from Nuclear Innovation North America LLC, South Texas Project Units 3 and 4 Termination of Combined Licenses NPF-97 and NPF-98, July 12, 2018.	ML18179A217
South Texas Project, Units 3 and 4, Request for Withdrawal of Combined Licenses, June 22, 2018 .....	ML18184A338
Withdrawal of Toshiba Advanced Boiling Water Reactor Design Certification Rule Renewal Application, June 9, 2016	ML16173A310

DOCUMENTS RELATED TO U.S. ABWR DESIGN CERTIFICATION RENEWAL RULE—Continued

Document	ADAMS Accession No./ Federal Register citation
GE-Hitachi Nuclear Energy—U.S. Advanced Boiling Water Design Certification Renewal Application, July 20, 2012 .. Reactor Regulatory History on Design Certification Rules, April 26, 2000 <sup>5</sup> ..... Notice of Issuance of Revised Final Design Approval for U.S. ABWR Standard Design, December 1, 1994 ..... Letter to GE Nuclear Energy Transmitting the Revised Final Design Approval for [the] U.S. ABWR Standard Design, November 23, 1994.	ML12125A385 ML003761550 59 FR 61647 ML20077A747
Issuance of Final Design Approval Pursuant to 10 CFR Part 52, Appendix O; U.S. Advanced Boiling Water Reactor Design; GE Nuclear Energy, July 20, 1994.	59 FR 37058
Final Design Approval FDA-0 for GE Nuclear Energy U.S. ABWR Standard Design, July 13, 1994 (Docket No. 52-001).	ML20070L506
GE Nuclear Energy; Receipt of Application for Design Certification, March 20, 1992 (Initial Application) .....	57 FR 9749

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2017-0090.

**XVII. Procedures for Access to Proprietary and Safeguards Information for Preparation of Comments on the U.S. ABWR Design Certification Renewal Rule**

This section contains instructions regarding how the non-publicly available documents related to this final rule, and specifically those listed in Tables 1.6-1 and 1.6-2 beginning on page 1.6-2 of Tier 2 of the DCD, may be accessed by interested persons who wish to comment on the design certification. These documents contain proprietary information and SGI. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This section provides information specific to this final rule; however, nothing in this section is intended to conflict with the SGI regulations.

Interested persons who desire access to proprietary information on the U.S. ABWR design should first request access to that information from GEH, the design certification applicant. A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described in the following section.

**Submitting a Request to the NRC for Access**

Within 10 days after publication of this direct final rule, any individual or entity who believes access to

<sup>5</sup> The regulatory history of the NRC’s design certification reviews is a package of documents that is available in the NRC’s PDR and NRC Library: Reactor Regulatory History on Design Certification Rules, April 26, 2000. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs. This document predates this rulemaking and therefore does not contain a regulatory history for this rulemaking.

proprietary information or SGI is necessary in order to submit comments on this U.S. ABWR DC renewal rule may request access to such information. Requests for access to proprietary information or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requestor shall submit a letter requesting permission to access proprietary information and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary is [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). The requestor must send a copy of the request to the DC applicant at the same time as the original transmission to the NRC using the same method of transmission. Requests to the applicant must be sent to Michelle Catts, Senior Vice President, Regulatory Affairs, General Electric-Hitachi Nuclear Energy Americas, LLC, 3901 Castle Hayne Road, P.O. Box 780, M/C A10, Wilmington, NC 28402.

The request must include the following information:

1. The name of this design certification, U.S. ABWR design certification; the rulemaking identification number, RIN 3150-AK04; the rulemaking docket number, NRC-2017-0090; and the **Federal Register** citation for this rule.
2. The name, address, and email or FAX number of the requester.
3. If the requestor is an entity, the name of the individual(s) to whom access is to be provided, including the identity of any expert, consultant, or

assistant who will aid the requestor in evaluating the information.

4. If the request is for proprietary information, the requester’s need for the information in order to prepare meaningful comments on the design certification must be demonstrated. Each of the following areas must be addressed with specificity:

- a. The specific issue or subject matter on which the requester wishes to comment;
- b. An explanation why information that is publicly available is insufficient to provide the basis for developing meaningful comment on the U.S. ABWR DC renewal rule with respect to the issue or subject matter described in paragraph 4.a. of this section; and
- c. The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested proprietary information to provide the basis for meaningful comment. Technical competence may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

d. A chronology and discussion of the requester’s attempts to obtain the information from the design certification applicant, and the final communication from the requester to the applicant and the applicant’s response, if any was provided, with respect to the request for access to proprietary information must be submitted.

5. If the request is for SGI, the request must include the following:

- a. A statement that explains each individual’s “need to know” the SGI, as required by §§ 73.2 and 73.22(b)(1). Consistent with the definition of “need to know” as stated in § 73.2, “Definitions,” the statement must explain:
  - i. The specific issue or subject matter on which the requester wishes to comment;
  - ii. An explanation of why publicly available information is insufficient to

provide the basis for developing meaningful comment on the design certification with respect to the issue or subject matter described in paragraph 5.a.i. of this section and why the SGI requested is indispensable in order to develop meaningful comments;<sup>6</sup> and

iii. The technical competence (demonstrable knowledge, skill, training, or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for meaningful comment. Technical competence may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

b. A completed Form SF-85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and § 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301-415-3710.<sup>7</sup>

c. A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with § 73.57(d). Copies of Form FD-258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. Copies of Form FD-258 may be obtained by sending an email to [MAILSVC.Resource@nrc.gov](mailto:MAILSVC.Resource@nrc.gov) or by sending a written request to U.S. Nuclear Regulatory Commission, Attn: Mailroom/Fingerprint Card Request, 11555 Rockville Pike, Rockville, MD 20852. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, § 73.22(b)(1), and Section 149 of the Atomic Energy Act of

1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

d. A check or money order in the amount of \$326.00<sup>8</sup> payable to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted; and

e. If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals relieved from the criminal history records check and background check requirements, as stated in § 73.59, the requestor should also provide a statement specifically stating which relief the requestor is invoking, and explaining the requestor's basis (including supporting documentation) for believing that the relief is applicable. While processing the request, the NRC's Office of Administration, Personnel Security Branch, will make a final determination whether the stated relief applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of his or her status prior to submitting the request. Persons who are not subject to the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Copies of documents and materials required by paragraphs 5.d.-g., as applicable, of this section must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWFN-07D04M, 11555 Rockville Pike, Rockville, MD 20852. These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

Based on an evaluation of the information submitted under paragraphs 4.a.-4.d. or 5.a.-g. of this section, as applicable, the NRC staff will determine within 10 days of receipt of the written access request whether the requestor has established a legitimate need for access

to proprietary information or need to know the SGI requested.

#### Determination of Legitimate Need for Access

For proprietary information access requests, if the NRC determines that the requester has established a legitimate need for access to proprietary information, the NRC will notify the requester in writing that access to proprietary information has been granted. The NRC must first notify the DC applicant of the NRC's determination to grant access to the requester not less than 10 days before informing the requester of the NRC's decision. If the applicant wishes to challenge the NRC's determination, it must follow the procedures in Predislosure Procedures for Proprietary Information Constituting Trade Secrets or Confidential Commercial or Financial Information of this section. The NRC will not provide access to disputed proprietary information to the requester until the procedures are completed as described in Predislosure Procedures for Proprietary Information Constituting Trade Secrets or Confidential Commercial or Financial Information of this section. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of proprietary information by each individual who will be granted access.

For requests for access to SGI, if the NRC determines that the requester has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by § 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit by each individual who will be granted access to SGI.

#### Release and Storage of SGI

Prior to providing SGI to the requester, the NRC staff will conduct (as

<sup>6</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this document do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.

<sup>7</sup> The requester will be asked to provide his or her full name, Social Security Number, date and place of birth, telephone number, and email address.

<sup>8</sup> This fee is subject to change pursuant to the Defense Counter Intelligence and Security Agency's (DCSA) adjustable billing rates.

necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of § 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

#### Filing of Comments on the U.S. ABWR Design Certification Renewal Rule Based on Non-Public Information

Any comments on this final rule that are based upon the disclosed proprietary information or SGI must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with all NRC requirements regarding the submission of proprietary information and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

#### Review of Denials of Access

If the request for access to proprietary information or SGI is denied by the NRC, the NRC shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with § 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under § 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

Appeals from a denial of access must be made to the NRC's Executive Director for Operations (EDO) under § 9.29. The decision of the EDO constitutes final agency action under § 9.29(d).

#### Predisclosure Procedures for Proprietary Information Constituting Trade Secrets or Confidential Commercial or Financial Information

The NRC will follow the procedures in § 9.28 if the NRC determines, under the Determination of Legitimate Need for Access of this section, that access to proprietary information constituting trade secrets or confidential commercial or financial information will be provided to the requester. However, any objection filed by the applicant under § 9.28(b) must be filed within 15 days of the NRC notice in the Determination of Legitimate Need for Access of this

section rather than the 30-day period provided for under § 9.28(b). In applying the provisions of § 9.28, the applicant for the DC rule will be treated as the "submitter."

#### XVIII. Incorporation by Reference—Reasonable Availability to Interested Parties

The NRC is incorporating by reference the U.S. ABWR DCD, Revision 7. As described in the "Discussion" section of this document, the generic DCD combined into a single document Tier 1 and Tier 2 information and generic technical specifications in order to effectively control this information and facilitate its incorporation by reference into the rule. The NRC also is incorporating by reference two GEH technical reports (NEDO-33875 and NEDO-33878).

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. The OFR's regulations require an agency to include in a direct final rule a discussion of the ways that the materials the agency incorporates by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for direct final rules as set forth in 1 CFR 51.5(b)(2).

The NRC considers "interested parties" to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for the purposes of determining whether the material is "reasonably available." The NRC considers the following to be classes of interested parties in NRC rulemakings with regard to the material to be incorporated by reference:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, "small entities" has the same meaning as a "small entity" under § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight (this

class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, "large entities" are those that do not qualify as a "small entity" under § 2.810.

- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, States, local governmental bodies (within the meaning of § 2.315(c)).
- Federally-recognized and State-recognized<sup>9</sup> Indian tribes.
- Members of the general public (*i.e.*, individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who may wish to gain access to the materials which the NRC incorporates by reference by rulemaking in order to participate in the rulemaking process.

The NRC makes the materials incorporated by reference available for inspection to all interested parties, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301-415-7000; email:

*Library.Resource@nrc.gov*. In addition, as described in Section XVI of this document, documents related to this direct final rule are available online in the NRC's Agencywide Documents Access and Management System (ADAMS) Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>.

The NRC concludes that the materials the NRC is incorporating by reference in this final rule are reasonably available to all interested parties because the materials are available to all interested parties in multiple ways and in a manner consistent with their interest in the materials.

#### List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

<sup>9</sup> State-recognized Indian tribes are not within the scope of 10 CFR 2.315(c). However, for purposes of the NRC's compliance with 1 CFR 51.5, "interested parties" includes a broad set of stakeholders, including State-recognized Indian tribes.



For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR part 52:

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

**Authority:** Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 2. Revise appendix A to 10 CFR part 52 to read as follows:

### Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

#### I. Introduction

Appendix A constitutes the renewed standard design certification for the U.S. Advanced Boiling Water Reactor (U.S. ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design is General Electric-Hitachi Nuclear Energy Americas, LLC (GEH).

#### II. Definitions

A. *Generic design control document (generic DCD)* means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications (generic TS)* means the information required by §§ 50.36 and 50.36a of this chapter for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means that portion of the combined license (COL) final safety analysis report (FSAR) that sets forth both the generic DCD information and any plant-specific changes to generic DCD information.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes

to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in paragraph III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by § 52.47(a) and (c), with the exception of generic TS and conceptual design information;
2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
3. COL action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. *Tier 2\** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in paragraph VIII.B.6 of this appendix. This designation expires for some Tier 2\* information under paragraph VIII.B.6 of this appendix.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or
2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in § 50.2 of this chapter, § 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

#### III. Scope and Contents

A. Incorporation by reference approval. The ABWR material identified in paragraph III.A.1 of this section is approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the generic DCD, including the generic technical specifications, and the two GEH technical reports (NEDO-33875 and NEDO-33878) from Michelle Catts, Senior Vice President, Regulatory Affairs, General Electric-Hitachi Nuclear Energy Americas, LLC, 3901 Castle Hayne Road, P.O. Box 780, M/C A10, Wilmington, NC 28402. You can view the generic DCD, including the generic technical specifications, and the two GEH technical reports (NEDO-33875 and NEDO-33878) online in the NRC Library at [https://](https://www.nrc.gov/reading-rm/adams.html)

[www.nrc.gov/reading-rm/adams.html](https://www.nrc.gov/reading-rm/adams.html). In ADAMS, search under ADAMS Accession No. ML20093K254 to obtain the generic DCD, ADAMS Accession No. ML17059C523 to obtain GEH technical report NEDO-33875, and ADAMS Accession No. ML18092A306 to obtain GEH technical report NEDO-33878. If you do not have access to ADAMS or if you have problems accessing documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-3747, or by email at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). Copies of the ABWR materials are available in the ADAMS Public Documents Collection. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

1. General Electric-Hitachi Nuclear Energy Americas, LLC

a. ABWR Design Control Document Tier 1 (25A5675AA), Revision 7 (October 2019).

b. ABWR Design Control Document Tier 2 (25A5675AB), Revision 7 (October 2019).

c. Technical Report NEDO-33875, ABWR US Certified Design—Aircraft Impact Assessment, Licensing Basis Information and Design Details for Key Design Features, Rev. 3 (M170049) (February 2017).

d. Licensing Technical Report NEDO-33878, ABWR ECCS Suction Strainer Evaluation of Long-Term Recirculation Capability, Rev. 3 (M180068) (March 2018).

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, the "Technical Support Document for the ABWR," and the "Amendment to Technical Support Document for the ABWR," are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the U.S. ABWR DCD Tier 2 Chapter 19 do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for the design certification renewal of the U.S. ABWR design or the NUREG-1503, "Final Safety Evaluation Report Related to Certification of the ABWR Standard Design"; NUREG-1503, Supplement 1; and NUREG-1503, Supplement 2, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

#### IV. Additional Requirements and Restrictions

A. An applicant for a COL that wishes to reference this appendix shall, in addition to complying with the requirements of §§ 52.77, 52.79, and 52.80, comply with the following requirements:



1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the U.S. ABWR design, either by including or incorporating by reference the generic DCD information, and as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by §§ 50.36 and 50.36a of this chapter;

d. Information demonstrating that the site characteristics fall within the site parameters and that the interface requirements have been met;

e. Information that addresses the COL action items; and

f. Information required by § 52.47(a) that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the sensitive, unclassified, non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the U.S. ABWR generic DCD.

4. Include, as part of its application, a demonstration that an entity other than GEH is qualified to supply the U.S. ABWR design, unless GEH supplies the design for the applicant's use.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

## V. Applicable Regulations

A.1. Except as indicated in paragraphs A.2 and A.3 and B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR parts 20, 50, 52, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the final safety evaluation report (NUREG-1503); NUREG-1503, Supplement 1; and as described in NUREG-1503, Supplement 2, for renewal modifications except as it pertains to addressing compliance with § 50.150 of this chapter.

2. Except as indicated in paragraphs A.1 and A.3 and B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR parts 20, 50, 52, 73, and 100, codified as of September 29, 2021, that are applicable and technically relevant, as described in NUREG-1503, Supplement 2, for renewal amendments.

3. Except as indicated in paragraphs A.1 and A.2 and B of this section, the regulations in § 50.150 of this chapter, codified as of September 29, 2021, apply to the U.S. ABWR design, that are applicable and technically relevant, as described in NUREG-1503, Supplement 2.

B. The U.S. ABWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console—codified as of May 2, 1997;

2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride,

and Dissolved Gases—codified as of May 2, 1997; and

3. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration—codified as of May 2, 1997.

## VI. Issue Resolution

A. The Commission has determined that the structures, systems, and components and design features of the U.S. ABWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, and components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design.

B. The Commission considers the following matters resolved within the meaning of § 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under § 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues associated with the information in the final safety evaluation reports (NUREG-1503; NUREG-1503, Supplement 1; and NUREG-1503, Supplement 2), Tier 1, Tier 2, and the rulemaking records for original certification and renewal of the U.S. ABWR design, with the exception of generic TS and other operational requirements;

2. All nuclear safety and safeguards issues associated with the referenced information in the 85 public and non-public documents in Tables 1.6-1 and 1.6-2 of Tier 2 of the generic DCD, or other referenced documents, which, in context, are intended as requirements in the generic DCD for the U.S. ABWR design;

3. All generic changes to the DCD under and in compliance with the change processes in paragraphs VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in paragraphs VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant; and

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for the U.S. ABWR design (ADAMS Accession No. ML21147A381) and GEH's supplemental evaluation of various severe accident mitigation design alternatives to prevent and mitigate severe accidents in "Amendment to Technical Support Document for the ABWR" (ADAMS Accession No. ML110040178), which updates information in the original

"Technical Support Document for the ABWR" (ADAMS Accession No. ML100210563) for plants referencing this appendix whose averted risk person-rem value for each severe accident mitigation design alternative is less than or equal to the averted risk person-rem value for that severe accident mitigation design alternative provided in Table 5 of the original technical support document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of § 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E. The NRC will specify, at an appropriate time, the procedures to be used by an interested person who wishes to review portions of the DC or references containing safeguards information or sensitive unclassified non-safeguards information (including proprietary information, such as trade secrets and commercial or financial information obtained from a person that are privileged or confidential (§ 2.390 of this chapter and 10 CFR part 9), and security-related information), for the purpose of participating in the hearing required by § 52.85, the hearing provided under § 52.103, or in any other proceeding relating to this appendix, in which interested persons have a right to request an adjudicatory hearing.

## VII. Duration of this Appendix

This appendix may be referenced for a period of 15 years from September 29, 2021, except as provided for in §§ 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn, or the license expires or is terminated by the NRC, including any period of extended operation under a renewed license.

## VIII. Processes for Changes and Departures

### A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in § 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraph A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through

plant-specific orders are governed by the requirements in § 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in §§ 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

#### B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in § 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraph B.3, B.4, or B.5, of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order, while this appendix is in effect under § 52.55 or § 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in § 50.12(a) of this chapter are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 50.12(a) of this chapter. The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The granting of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The granting of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2\* information, or the TS, or requires a license amendment under paragraph B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by § 52.47(a)(28) to address aircraft impacts, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component important to safety and

previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a structure, system, or component important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of a structure, system, or component important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design-basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2, affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. A proposed departure from Tier 2 information required by § 52.47(a)(28) to address aircraft impacts shall consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by § 50.150(a) of this chapter. The applicant or licensee shall describe, in the plant-specific DCD, how the modified design features and functional capabilities continue to meet the aircraft impact assessment requirements in § 50.150(a)(1) of this chapter.

e. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by § 50.90 of this chapter.

f. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

g. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under § 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to complying with the general requirements of § 2.309 of this chapter, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an

asserted noncompliance with an ITAAC acceptance criterion in the case of a § 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2\* information, which is designated with brackets, italicized text, and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and § 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2\* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel burnup limit (4.2).

(2) Fuel design evaluation (4.2.3).

(3) Fuel licensing acceptance criteria (Appendix 4B).

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2\* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2\* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC N-690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel system and assembly design (4.2), except burnup limit.

(7) Nuclear design (4.3).

(8) Equilibrium cycle and control rod patterns (Appendix 4A).

(9) Control rod licensing acceptance criteria (Appendix 4C).

(10) Instrument setpoint methodology.

(11) EMS performance specifications and architecture.

(12) SSLC hardware and software qualification.

(13) Self-test system design testing features and commitments.

(14) Human factors engineering design and implementation process.

d. Departures from Tier 2\* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

#### C. Operational Requirements

1. Changes to U.S. ABWR DC generic TS and other operational requirements that were

completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in § 50.109 of this chapter. Changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraph A or B of this section.

2. Changes to U.S. ABWR DC generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraph C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances, as defined in § 2.335 of this chapter are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. The granting of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for the issuance, amendment, or renewal of a license, or for operation under § 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed, may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of § 2.309 of this chapter and must either demonstrate why special circumstances as defined in § 2.335 of this chapter are present or demonstrate that the proposed change is necessary for compliance with the Commission's regulations applicable and in effect, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the licensing proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under § 50.90 of this chapter.

## IX. [Reserved]

## X. Records and Reporting

### A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes that are made to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any periods of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any periods of renewal).

4.a. The applicant for the U.S. ABWR design shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of § 50.150(a) of this chapter for the term of the certification (including any periods of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of § 50.150(a) of this chapter throughout the pendency of the application and for the term of the license (including any periods of renewal).

### B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each departure. This report must be filed in accordance with the filing requirements applicable to reports in § 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in § 50.71(e) of this chapter and 52.3.

3. The reports and updates required by paragraphs X.B.1 and X.B.2 of this appendix must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its finding required by § 52.103(g) of this chapter, the report must be

submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by § 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by §§ 50.59(d)(2) and 50.71(e)(4) of this chapter, respectively, or at shorter intervals as specified in the license.

Dated: June 23, 2021.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2021-13801 Filed 6-30-21; 8:45 am]

**BILLING CODE 7590-01-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 702

RIN 3133-AF03

### Transition to the Current Expected Credit Loss Methodology

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** This final rule facilitates the transition of federally insured credit unions (FICUs) to the current expected credit loss (CECL) methodology required under Generally Accepted Accounting Principles (GAAP). The final rule provides that, for purposes of determining a FICU's net worth classification under the prompt corrective action (PCA) regulations, the Board will phase-in the day-one adverse effects on regulatory capital that may result from adoption of CECL. Consistent with regulations issued by the other federal banking agencies, the final rule will temporarily mitigate the adverse PCA consequences of the day-one capital adjustments, while requiring that FICUs account for CECL for other purposes, such as Call Reports. The final rule also provides that FICUs with less than \$10 million in assets are no longer required to determine their charges for loan losses in accordance with GAAP. These FICUs may instead use any reasonable reserve methodology (incurred loss), provided that it adequately covers known and probable loan losses. The final rule follows publication of an August 19, 2020, proposed rule and takes into consideration the public comments received on the proposed rule.

**DATES:** Effective August 2, 2021.

**FOR FURTHER INFORMATION CONTACT:**

*Policy and Accounting:* Alison L. Clark, Chief Accountant, Office of Examinations and Insurance, at (703) 518-6360; *Legal:* Ariel Pereira, Senior Staff Attorney, Office of General Counsel, at (703) 548-2778; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

**SUPPLEMENTARY INFORMATION:**

- I. This Final Rule
- II. Background
  - A. CECL Accounting Methodology
  - B. The Board's August 19, 2020, Proposed Rule
- III. Legal Authority
  - A. The Board's Rulemaking Authority, Generally
  - B. CECL Transition
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  - A. The Comments, Generally
  - B. Comments Regarding Transition Phase-In
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- V. Description of Final Rule
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- VI. Department of the Treasury Report
- VII. Regulatory Procedures
  - A. Regulatory Flexibility Act
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  - E. Small Business Regulatory Enforcement Fairness Act

**I. This Final Rule**

On July 30, 2020, the NCUA Board (Board) proposed amending the agency's regulations to facilitate the adoption by FICUs of the CECL accounting methodology as mandated by GAAP. The proposed rule was subsequently published in the **Federal Register** on August 19, 2020.<sup>1</sup> This final rule follows publication of the August 19, 2020, proposed rule and takes into consideration the public comments received on the proposal. Following consideration of the comments, the

Board has decided to make the following changes to the proposed rule:

1. The Board has made a technical change to the regulatory text for purposes of clarity. The Board has removed the references to specific calendar dates in the discussion of the transition period for the phase-in. The regulatory text now consistently refers to fiscal years.

2. The final rule also clarifies that state-chartered FICUs with less than \$10 million in assets and that are required by state law to comply with GAAP are eligible for the transition phase-in.

Section IV. of this preamble summarizes the significant issues raised by the public commenters on the proposed rule, as well as the Board's responses to these issues, including the Board's rationale for making the change listed above.

**II. Background****A. CECL Accounting Methodology**

The CECL standard applies to all banks, savings associations, credit unions,<sup>2</sup> and financial institution holding companies, regardless of size, that file regulatory reports for which the reporting requirements conform to GAAP. Adoption of CECL is expected to result in greater transparency of expected losses at an earlier date during the life of a loan.

The Federal Accounting Standards Board (FASB), which establishes the GAAP standards, provided a staggered effective date for CECL. In doing so, it has recognized two classes of institutions subject to CECL: (1) Public business entities (PBEs) that meet the definition of a U.S. Securities and Exchange (SEC) filer, excluding entities eligible to be smaller reporting companies (SRCs) as defined by the SEC, and (2) all other entities, which includes FICUs. The effective date for SEC-filers (other than SRCs) was fiscal years beginning after December 15, 2019. All other entities (including all FICUs) are required to commence implementation of the standard for fiscal years beginning after December 15, 2022.<sup>3</sup> All entities subject to CECL,

<sup>2</sup> CECL applies to all credit unions, irrespective of whether the credit union is federally insured or whether it is chartered federally or under state law.

<sup>3</sup> FASB originally established the following three categories of entities subject to CECL: (1) PBE SEC filers; (2) PBEs that are not SEC filers; and (3) non-PBEs (including FICUs). The original implementation date for non-PBEs was December 15, 2020. FASB subsequently delayed the implementation date for non-PBEs until December 15, 2021. ([https://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176168232528&acceptedDisclaimer=true](https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176168232528&acceptedDisclaimer=true)) FASB issued a second update consolidating the entities subject to CECL into two categories (SEC filers (not including SRCs)

however, may voluntarily elect to adopt CECL earlier than the specified implementation date, commencing as early as fiscal years beginning after December 15, 2018, including interim periods within those fiscal years.<sup>4</sup>

CECL differs from the incurred loss methodology currently used by FICUs in several key respects. Most significantly for purposes of this rulemaking, CECL requires the recognition of lifetime expected credit losses for financial assets measured at amortized cost, not just those credit losses that have been incurred as of the reporting date. CECL also requires the incorporation of reasonable and supportable forecasts in developing an estimate of lifetime expected credit losses, while maintaining the current requirement for consideration of past events and current conditions. Furthermore, the probable threshold for recognition of allowances in accordance with the incurred loss methodology is removed under CECL. Taken together, estimating expected credit losses over the life of an asset under CECL, including consideration of reasonable and supportable forecasts but without applying the probable threshold that exists under the incurred loss methodology, results in earlier recognition of credit losses.<sup>5</sup>

Upon adoption of CECL, an institution will record a cumulative-effect adjustment to retained earnings (known as "the day-one adjustment").

and all other entities) and further extending the implementation dates as described above. ([https://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176173775344&acceptedDisclaimer=true](https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176173775344&acceptedDisclaimer=true)).

<sup>4</sup> FASB ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments*, June 2016, page 5. FASB ASU No. 2016-13 is available at: [https://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176168232528](https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176168232528). Section 4014 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) suspended mandatory compliance with CECL between March 27, 2020 (the date of enactment of the CARES Act) and the earlier of: (1) The date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) terminates; or (2) December 31, 2020. This provision is not applicable to virtually any FICU because, as noted, they are not required to begin compliance with CECL until December 15, 2022, and a very small number have adopted it earlier voluntarily.

<sup>5</sup> See *Frequently Asked Questions on the New Accounting Standard on Financial Instruments—Credit Losses*, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency on April 3, 2019, for a more comprehensive discussion of the changes made by CECL to existing GAAP standards. The document is available at: <https://www.ncua.gov/files/letters-credit-unions/financial-instruments-credit-losses-faqs.pdf>.

<sup>1</sup> 85 FR 50964 (Aug. 19, 2020). The proposed rule is available from the **Federal Register** website at: <https://www.govinfo.gov/content/pkg/FR-2020-08-19/pdf/2020-16987.pdf>.

The day-one adjustment will be equal to the difference, if any, between the amount of credit loss allowances required under the incurred loss methodology and the amount of credit loss allowances required under CECL. A critical consideration for institutions subject to the new accounting rules will be the impact of CECL on capital. Institutions could experience a sharp increase in expected credit losses on the effective date as a result of the day-one adjustment, which could lower their capital classification under relevant statutory and regulatory authorities (such, as for example, under the Board's PCA regulations for credit unions).

#### *B. The Board's August 19, 2020, Proposed Rule*

The Board issued the August 19, 2020, proposed rule to mitigate the adverse effects on a FICU's PCA classification that may result from the day-one adjustment. Specifically, the proposed rule provides that, for purposes of the PCA regulations, the Board will phase-in the day-one effects on a FICU's net worth ratio over a three-year period (12 quarters). The proposed phase-in is consistent with the similar three-year phase-in provided by the other banking agencies to alleviate the impacts of adopting CECL on the banking organization subject to their supervision.<sup>6</sup>

Under the proposed rule, the phase-in would only be applied to those FICUs that adopt the CECL methodology for fiscal years beginning on or after December 15, 2022. FICUs that elect to adopt CECL earlier than the deadline established by FASB would not be eligible for the phase-in. Further, unlike banking organizations subject to the rule issued by the other banking agencies, eligible FICUs would not have the choice of opting into (or out of) the phase-in. Rather, the Board will apply the phase-in for all FICUs that meet the prescribed eligibility criteria.

FICUs would continue to calculate their net worth in accordance with GAAP and would also continue to be required to account for CECL for all other purposes, such as Call Reports. Further, under the proposed rule, FICUs with less than \$10 million in assets would no longer be required to determine their charges for loan losses in accordance with GAAP. This provision would eliminate the adverse

PCA consequences for smaller FICUs resulting from CECL. The Board's regulations would allow these FICUs to instead make charges for loan losses in accordance with any reasonable reserve methodology (incurred loss), provided that it adequately covers known and probable loan losses. Accordingly, FICUs in this asset-size category that choose to use the incurred loss methodology would not be subject to the phase-in described in this proposed rule.

Interested readers should refer to the preamble of the Board's August 19, 2020, proposed rule for additional background information regarding the proposed regulatory changes.

### **III. Legal Authority**

#### *A. The Board's Rulemaking Authority, Generally*

The Board is issuing this final rule pursuant to its authority under the Federal Credit Union (FCU) Act.<sup>7</sup> The FCU Act grants the Board a broad mandate to issue regulations governing both federal credit unions and all FICUs. For example, section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the act.<sup>8</sup> Other provisions of the FCU Act, confer specific rulemaking authority to address prescribed issues or circumstances. For example, section 216 of the FCU Act directs the Board to establish by regulation a system of PCA to restore the net worth of FICUs.<sup>9</sup> This final rule is being issued under both the general rulemaking authority conferred by section 120 of the FCU Act and also, as discussed below, the more specific grant of authority under section 216.

#### *B. CECL Transition*

Section 216 of the FCU Act authorizes the NCUA Board to issue regulations adjusting the net worth ratio requirements for FICUs if the other "banking agencies increase or decrease the required minimum level for the leverage limit" pursuant to section 38 of the Federal Deposit Insurance (FDI) Act.<sup>10</sup> In addition, section 216 of the FCU Act also requires that the Board

determine—in consultation with the other banking agencies—"the reason for the increase or decrease in the required minimum level for the leverage limit also justifies adjustment to the net worth ratios."<sup>11</sup> In accordance with the consultation requirements, the NCUA, at the proposed rule stage, briefed relevant staff of the other banking agencies of the contents and purposes of this rulemaking.

With regards to the other factor identified in the quoted statutory language, the February 14, 2019, final rule does not directly raise or lower the leverage limit,<sup>12</sup> or any other of the capital ratios applicable to banking organizations. For example, the leverage limit (defined as the ratio of tier 1 capital to average total consolidated assets) remains unchanged at 4 percent. Nevertheless, the stated intent of the other banking agencies was to effectively modify the capital ratios for purposes of PCA oversight. Accordingly, the NCUA has determined that both conditions set forth in section 216 have been satisfied for purposes of issuing this proposed rule.<sup>13</sup>

The effects of the proposed phase-in on a FICU's net worth calculations are consistent with section 216 of the FCU Act and closely modeled on the CECL transition provisions issued by the other banking agencies. Specifically, the final rule is narrowly tailored to temporarily mitigating the impacts of CECL adoption on the PCA classification of a FICU's net worth. This final rule does not adjust the numeric net worth ratios under the NCUA's PCA system. Further, the rule does not revise the definition of net worth, and FICUs will continue to calculate their net worth and net worth ratios in accordance with existing statutory and regulatory requirements. The sole purpose of the phase-in is to aid FICUs in adjusting to the new GAAP standards in a uniform manner and without disrupting their ability to serve their members.

The Board notes that while section 216 defines "net worth"—the numerator for determining the net worth ratio—it does not define the term "total assets," which comprises the denominator of the equation. The definition of the term is

<sup>11</sup> 12 U.S.C. 1790d(c)(2)(B).

<sup>12</sup> Termed the "leverage ratio" in the banking agencies' regulations governing capital adequacy standards. See, 12 CFR 12 CFR 3.10 (OCC), 217.10 (FRB), and 324.10 (FDIC).

<sup>13</sup> The Board also finds that the other banking agencies' March 31, 2020, interim final rule on this subject does not affect this analysis because it affects only those banking organizations that have adopted CECL as of 2020 and does not alter the three-year phase-in for other banking organizations that are covered in the same category of FASB's standards.

<sup>7</sup> 12 U.S.C. 1751 *et seq.*

<sup>8</sup> 12 U.S.C. 1766(a).

<sup>9</sup> 12 U.S.C. 1790d. Other provisions of the FCU Act providing the Board with specific rulemaking authority include section 207 (12 U.S.C. 1787), which is a specific grant of authority over share insurance coverage, conservatorships, and liquidations. Section 209 (12 U.S.C. 1789) grants the Board plenary regulatory authority to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.

<sup>10</sup> 12 U.S.C. 1790d(c)(2)(A).

<sup>6</sup> See the February 14, 2019, proposed rule published by the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation, at 84 FR 4222 (February 14, 2019), and modified by interim-final rule published on March 31, 2020, at 62 FR 17723 (March 31, 2020).

left to the regulatory discretion of the Board. The Board has elected to exercise this discretion and defined “total assets” in part 702. Specifically, the regulations provide that a FICU’s total assets may be measured by either its (1) average quarterly balance; (2) average monthly balance; (3) average daily balance; or (4) quarter-end balance.<sup>14</sup> As an alternative to the phase-in that would be provided by this final rule, the Board could have elected to revise the definition of “total assets” in a manner enabling FICUs to effect the CECL day-one adjustments without undue adverse consequences. The Board opted for the phase-in given its simplicity and ease of administration. Nonetheless, the Board acknowledges that an alternative legal basis exists for rulemaking to mitigate the consequences of CECL implementation.

#### C. Small FICU Charges for Loan Losses

Section 202 of the FCU Act requires that, in general, “applicable reports and statements required to be filed with the Board shall be uniform and consistent with” GAAP.<sup>15</sup> The statute, however, also provides an exception to GAAP compliance for FICUs with total assets of “less than \$10,000,000, unless prescribed by the Board or an appropriate State credit union supervisor.”<sup>16</sup>

The Board’s regulations in § 702.402 require that charges for loan losses be made in accordance with GAAP and does not distinguish based on the asset size of FICUs. In effect, § 702.402 exercises the Board’s discretion under section 202 of the FCU Act to override the exception for smaller FICUs by prescribing regulations. The Board has elected to once again exercise its statutory discretion under section 202 of the FCU Act. The Board’s regulations will no longer require that FICUs with total assets less than \$10 million make charges for loan losses in accordance with GAAP. Instead the regulations will allow these FICUs to make such charges under any reasonable reserve methodology (incurred loss) provided it adequately covers known and probable loan losses. The transition provisions described above apply to FICUs adopting CECL. Accordingly, smaller FICUs that elect to use a non-GAAP measure are not eligible for the phase-in.

The Board also notes that section 202 of the FCU Act could also potentially, as an alternative to the provisions discussed above, authorize the Board to

provide a transition of the day-one effects of CECL implementation. This provision authorizes the Board to prescribe an accounting principle for application to any FICU if the Board determines that the application of a GAAP principle is not appropriate. Because the Board has clear authority to effect the transition to CECL under section 216, it is not necessary to rely on section 202.

#### IV. Discussion of the Public Comments on the August 19, 2020, Proposed Rule

##### A. The Comments, Generally

The public comment period on the proposed rule closed on October 19, 2020. The NCUA received 18 public comments on the proposal. Comments were received from individual FICUs, as well as from national, state, and regional organizations representing FICUs.

Thirteen of the commenters objected to FASB’s application of CECL to FICUs, largely due to the anticipated negative impact of the day-one adjustment. The commenters wrote that FICUs building reserves to meet the CECL benchmark will be diverting funds that could otherwise be used to provide credit to members and communities during the ongoing COVID–19 event. They urged the NCUA to continue exploring all avenues, including working with FASB, to exempt FICUs from the CECL requirements.

While believing CECL should not apply to FICUs at all, the commenters unanimously supported the proposed rule. The commenters commended the Board’s efforts to assist FICUs with the transition to the CECL methodology. Several of these commenters, however, also offered suggested changes to the proposed rule.

*NCUA Response:* The Board appreciates the support expressed by the commenters, as well as the specific questions and concerns raised in their individual comments. The Board has addressed these specific comments below. The Board reiterates its belief that, given the unique characteristics of the credit union industry, the CECL accounting standards should not apply to FICUs. The Board will continue to work with FASB, the other banking agencies, and appropriate stakeholders to exempt FICU from these standards.

##### B. Comments Regarding Transition Phase-In

*Comment: Mandatory opt-in for transition phase-in.* Under the proposed rule, FICUs would not have the option of electing whether to opt into (or out of) the transition provisions. Several commenters urged the NCUA to

reconsider this automatic approach and provide a FICU with the ability to opt into or out of the transition provisions based on its financial condition. The commenters wrote that, for strategic reasons, some FICUs may wish to recognize the full cost and adverse effect on their capital of CECL in one year rather than phasing in the adverse effects over a prolonged period. The commenters wrote that if the NCUA decides it must determine eligibility, the agency should expand the factors upon which the determination is made beyond a reduction in earnings caused by the application of CECL. For example, the NCUA might consider additional factors, such as asset quality and overall risk in the loan portfolio, current financial condition of the credit union, and the current state of the economy at the time of the determination. Alternatively, the NCUA could limit the mandatory opt-in for FICUs with a lower CAMEL rating.

*NCUA Response:* The Board has declined to adopt these comments. As the commenters note, it is true that some FICUs will have a business rationale for recognizing the day-one effects of CECL on their capital ratios. This final rule does not compel any FICU to make use of the transition phase-in. A FICU that determines adoption of CECL is in its best interests has the option to do so, and is free to make this decision at any time until the effective date established by FASB for CECL implementation (fiscal years beginning after December 15, 2022). The Board continues to believe, however, that requiring an affirmative opt-in from the majority of FICUs that require the phase-in would constitute an unnecessary administrative exercise. Automatic implementation of the phase-in by the NCUA will help to ensure its uniform application and that its benefits are provided to the greatest possible number of eligible FICUs.

*Comment: Option for longer phase-in.* Two commenters suggested that the NCUA consider granting longer phase-in requests when a FICU’s projected capital level after three years is expected to remain below normal. According to the commenters, such flexibility would allow FICUs to focus on restoring capital levels during an appropriately tailored phase-in timeframe rather than bracing for adverse supervisory consequences or the administrative burden of heightened examiner scrutiny.

*NCUA Response:* The Board believes that the three-year period will suffice to alleviate the most detrimental impacts on a FICU’s capital ratios resulting from adoption of CECL. Further, and as noted

<sup>14</sup> 12 CFR 702.2(k).

<sup>15</sup> 12 U.S.C. 1782(b)(6)(C)(i).

<sup>16</sup> 12 U.S.C. 1782(b)(6)(C)(iii).

above, the Board is promulgating this rule pursuant to the legal authority conferred by section 216 of the FCU Act. In general, section 216 charges the NCUA with establishing PCA regulations that are “comparable” to section 38 of the FDI Act—the statute that applies PCA to other federally insured depository institutions.<sup>17</sup> More specifically with regards to this rulemaking, section 216 authorizes the Board to “correspondingly” revise its regulations in response to changes made by the other banking agencies to the leverage limit under section 38 of the FDI Act.<sup>18</sup> In accordance with these statutory directives, the phase-in provided by this final rule is modelled on the transition provisions adopted by the other banking agencies, and provides a similar three-year phase-in period.<sup>19</sup> The Board therefore declines to make the suggested change in order to maintain consistency with the CECL transition provisions issued by the other banking agencies.

*Comment: Redefining “total assets” in the net worth calculation.* Related to the preceding comment, one commenter noted the preamble language stating that “[a]n alternative to the to the phase-in . . . the Board could have elected to revise the definition of ‘total assets’ in a manner enabling FICUs to effect the CECL day-one adjustments without undue adverse consequences.”<sup>20</sup> The commenter wrote that, while the NCUA’s reliance on the authority provided by section 216 of the FCU Act is understandable from an administrative standpoint, the agency should consider issuing using the alternative “total assets” framework to grant FICUs more options, such as the ability to choose a longer phase-in period.

*NCUA Response:* The commenter is correct that the Board, in large measure, opted for the phase-in due to its ease of administration. Ensuring the administrative simplicity of its regulations is a significant consideration for the Board, especially during this pandemic period and the resulting economic fallout. Ease of administration, however, was only one of several considerations that factored into the Board’s decision. In making note of the statutory authority to re-define “total assets” in the preamble to the August 19, 2020, proposed rule, the

Board simply wished to acknowledge the existence of an alternative legal basis for this rulemaking. A rule implementing this alternate statutory authority would have almost surely been more time-consuming and complex than the phase-in. The re-definition of “total assets” might have possible effects beyond CECL implementation to include the NCUA’s PCA system as a whole. Moreover, and as noted previously, the NCUA is statutorily charged to maintain PCA regulations that are “comparable” with section 38 of the FDI Act. A change to the definition of “total assets” would require careful analysis to ensure compliance with the statutory comparability requirement. Given these considerations, the Board continues to believe that a phase-in issued on the authority provided by section 216 of the FCU Act is the most effective, administratively simple, and quickest manner to mitigate the day-one impacts of CECL implementation on FICUs.

*Comment: Non-calendar fiscal years.* One commenter objected that the proposed regulatory text measures the phase-in benefit by calendar dates and fails to account for FICUs that have non-calendar fiscal years. Specifically, the commenter wrote that the regulatory text refers to specific calendar date in the provisions for measuring the CECL transition amount. The commenter wrote that the calendar dates fail to capture the impact for FICUs with non-calendar fiscal years. The commenter wrote that this is inconsistent with the preamble, which references a credit union’s fiscal year and, in Section III.E., refers to a hypothetical FICU with a calendar fiscal year, impliedly acknowledging that FICUs may have a fiscal year other than a calendar fiscal year.<sup>21</sup> The commenter also noted that the regulation issued by the other banking agencies defines the CECL transition amount based on the regulated entity’s fiscal year without referencing specific dates.<sup>22</sup> The commenter suggested that to remedy this problem, the NCUA should follow the approach of the other banking agencies and define the CECL transitional amount by reference to a credit union’s fiscal year rather than set calendar dates.

*NCUA Response:* As the commenter notes, the preamble to the proposed rule correctly provides that the transition period is based on the credit union’s fiscal year (which may be a non-calendar year in the case of state-chartered credit unions) and not on

specific dates. The commenter notes preamble language referencing the possibility of a non-calendar year fiscal year. Another example is the preamble language providing that “[t]he difference in retained earnings constitutes the transitional amount that would be phased-in to the net worth ratio calculation over the proposed transition period, which would be the three-year period (twelve quarters) *beginning the first day of the fiscal year in which the FICU adopts CECL*” (emphasis added).<sup>23</sup> The Board agrees that the references to specific dates were potentially confusing. The Board has therefore removed the references to specific calendar dates, and the regulatory text now consistently refers to fiscal years.

*Comment: Calculation of transitional amount.* One commenter noted that proposed § 702.703(b)(2) defines the transition amount for the fourth through twelfth quarters as the difference between a FICU’s retained earnings on December 31, 2023 and December 30, 2024. The commenter wrote that the NCUA may have intended to refer to years 2022 and 2023 in this provision, since this measurement of the CECL transitional amount applies to Call Reports filed beginning on the first day in 2024, and it does not seem feasible to calculate the amount by reference to a figure that cannot be determined until the last day in 2024.

*NCUA Response:* As noted in the preceding response, the NCUA has removed the references to specific calendar dates in the regulatory text. For purposes of calculating the fourth through twelfth quarters of the transition period, the regulatory text now provides that the CECL transitional amount is equal to the difference between the credit union’s retained earnings as of the end of the fiscal year in which the credit union adopts CECL and the credit union’s retained earnings as of the beginning of its next fiscal year.

*Comment: Examinations and stress testing.* Several comments, while generally supportive of the proposed rule, had questions regarding the NCUA examination and stress testing protocols resulting from its implementation. One of these commenters suggested that the NCUA should consider implementing streamlined procedures for evaluating capital plans (including net worth restoration plans) when a FICU is expected to encounter capital stresses related to CECL adoption that persist after any applicable phase-in period. Another commenter warned that

<sup>17</sup> 12 U.S.C. 1790d(b)(1)(A). Section 38 of the FDI Act, 12 U.S.C. 1831o, was added by section 131 of the Federal Deposit Insurance Corporation Improvement Act, Public Law 102–242, 105 Stat. 2236 (1991).

<sup>18</sup> *Supra*, note 10.

<sup>19</sup> *Supra*, note 6.

<sup>20</sup> *Supra* note 1 at 50966–50967.

<sup>21</sup> *Id.* at 50968.

<sup>22</sup> 12 CFR 3.301(b)(2).

<sup>23</sup> *Supra* note 1, at 50967.



incorporating CECL into the stress testing regimen will increase capital volatility within the modelling and complicate stress testing estimations. The commenter urged the NCUA to continue discussions with covered FICUs and state regulators to ensure the regulatory stress testing framework can incorporate CECL when appropriate.

*NCUA Response:* The NCUA will monitor and periodically assess the efficacy of the CECL transition phase-in provisions. The Board will take these comments regarding capital plans and stress testing under advisement and, should it be deemed necessary, issue supplemental guidance or implement revised procedures to assist FICUs in their implementation of the rule.

*Comment: Need for Call Report guidance.* One of the commenters requested clarification on how the phased-in retained earnings would be reported on a FICU's Call Report. For example, the commenter asked whether the Call Report will reflect the phase-in adjustment through the addition of a new field.

*NCUA Response:* The Board notes that a new field has been provided in the Call Report for purposes of the phase-in. The NCUA will issue additional guidance and Call Report revisions as deemed necessary to assist FICUs in implementing this final rule.

### C. Comments Regarding GAAP Exemption for Small FICUs

*Comment: Future ability to phase-in CECL.* Five commenters encouraged the NCUA to authorize a FICU accumulating \$10 million, or greater, in assets after CECL has been implemented to phase-in the day-one negative impact. These commenters wrote that the one-time adjustment will be equally injurious to FICUs adopting CECL in the future and compensating for that is as important as doing so now.

*NCUA Response:* The Board has not revised the rule in response to these commenters. The final rule is designed to facilitate a FICU's transition to CECL without disrupting its ability to serve its members as a result of a PCA re-classification. Unlike FICUs that already (or soon will) exceed the \$10 million asset threshold for GAAP compliance, other FICUs will have more time and be better positioned to adjust their asset growth. The Board expects that smaller FICUs will undertake the necessary analysis to determine the possible impact of coming into GAAP compliance in developing their business plans. As a result, the Board does not believe that the phase-in is necessary or appropriate for such FICUs.

*Comment: Transition phase-in for small federally insured state-chartered credit unions subject to GAAP.* As provided in the preamble to the proposed rule, the exemption from the GAAP standards does not extend to smaller State-chartered FICUS that are required to comply with GAAP under State law.<sup>24</sup> One commenter inquired about the ability of these state-chartered FICUs to use the transition phase-in. The commenter noted that the regulatory text does not specify if these credit union are eligible for the transition provision. The commenter recommended the NCUA's final rule should make the proposed three-year phase-in available to FICUs that must follow GAAP, regardless of the size of the FICU.

*NCUA Response:* The transition provisions were designed to apply to all FICUs that adopt CECL, irrespective of their asset size. As the preamble to the proposed rule makes clear, the only FICUs "not eligible for the phase in" are "smaller FICUs that elect to use a non-GAAP measure."<sup>25</sup> State-chartered FICUs that are required by state law to follow GAAP are prohibited from making such election. Accordingly, the Board intended them to be eligible for the transition relief provided by this rulemaking. The Board has revised the regulatory text to clarify the eligibility of these credit unions. The final rule clarifies that state-chartered FICUs with less than \$10 million in assets and that are required by state law to comply with GAAP are eligible for the transition phase-in.

*Alternative GAAP structure for FICUs.* The preamble to the proposed rule notes that "section 202 of the FCU Act could also potentially, as an alternative to the provisions [of the proposed rule], authorize the Board to provide a transition of the day-one effects of CECL implementation."<sup>26</sup> This provision authorizes the Board to prescribe an alternative accounting principle to GAAP, so long as it is "no less stringent" than the GAAP principle it replaces.<sup>27</sup>

Four commenters wrote that the NCUA should consider the question of what constitutes an accounting standard that "is no less stringent" than GAAP for the purpose of expanding the scope of CECL relief. In doing so, commenters suggested that the NCUA might explore the possibility of a revised incurred loss methodology that allows more flexible evaluation of qualitative and

environmental factors. The commenters also suggested that the NCUA should work directly with the FASB to advance an interpretation of the "no less stringent" requirement that recognizes the unique burden that CECL poses for FICUs. One of these commenters wrote that the NCUA should request that FASB recognize the incurred loss methodology as an appropriate alternative accounting principle under section 202 of the FCU Act.

*NCUA Response:* The development of an alternate set of accounting standards that are "no less stringent" than GAAP would be a complex and time-consuming endeavor necessitating consultations with FASB and other stakeholders. At this time, the Board believes that GAAP compliance is the most effective way to help ensure that financial reporting is transparent and consistent between FICUs. The Board, however, will continue to explore ways to alleviate the compliance burdens imposed by GAAP. As noted, the Board is committed to working with FASB, the other banking agencies, and appropriate stakeholders on a possible exemption for FICUs from the CECL accounting standards.

*Comment: Transition phase-in for small federally insured state-chartered credit unions subject to GAAP.* As provided in the preamble to the proposed rule, the exemption from the GAAP standards does not extend to smaller state-chartered FICUS that are required to comply with GAAP under state law.<sup>28</sup> One commenter inquired about the ability of these state-chartered FICUs to use the transition phase-in. The commenter noted that the regulatory text does not specify if these credit union are eligible for the transition provision. The commenter recommended the NCUA's final rule should make the proposed three-year phase-in available to FICUs that must follow GAAP, regardless of the size of the FICU.

*NCUA Response:* The transition provisions were designed to apply to all FICUs that adopt CECL, irrespective of their asset size. As the preamble to the proposed rule makes clear, the only FICUs "not eligible for the phase in" are "smaller FICUs that elect to use a non-GAAP measure."<sup>29</sup> State-chartered FICUs that are required by state law to follow GAAP are prohibited from making such election. Accordingly, the Board intended them to be eligible for the transition relief provided by this rulemaking. The Board has revised the regulatory text to clarify the eligibility of

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 12 U.S.C. 1782(b)(6)(C)(iii).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



these credit unions. The final rule clarifies that state-chartered FICUs with less than \$10 million in assets and that are required by state law to comply with GAAP are eligible for the transition phase-in.

*Comment: GAAP relief for federally insured state-chartered credit unions.* As noted above, the preamble to the proposed rule provides that state-chartered FICUs subject to state laws and regulations may be required to comply with GAAP or other accounting standards under applicable state requirements.<sup>30</sup> One commenter wrote that approximately half the states either have explicit statutory or regulatory requirements for all FISCUs to comply with GAAP, or it is unclear whether such an express requirement exists. Two commenters suggested that the NCUA should work with the appropriate supervisory authorities to promote regulatory relief in states where the impediments are regulatory in nature. For those states with statutory mandates regarding GAAP adherence, the commenter asked that the NCUA pursue potential legislative fixes and to notify state legislative leaders of the exemption and the advantage federal credit unions would have over similarly sized FISCUs if not provided legislative relief.

*NCUA Response:* The Board will continue to work with FASB and other stakeholders, including appropriate State regulators, to minimize the detrimental impacts of GAAP compliance on FICUs. The Board also notes that, as discussed in the preceding comment response, state-chartered FICUs with less than \$10 million in assets and that are required by state law to comply with GAAP are eligible for the transition phase-in.

## V. Description of Final Rule

### A. New Subpart G to Part 702

The final rule adds a new subpart G to the PCA regulations in 12 CFR part 702, captioned “CECL Transition Provisions.” New subpart G applies to FICUs that meet the eligibility criteria specified in the final rule. Notwithstanding the CECL transition provisions, all other aspects of part 702 would continue to apply.

### B. Eligibility for Transition Provisions

FICUs that have not adopted CECL prior to their first fiscal year beginning after December 15, 2022 (the implementation date established by FASB) are eligible for the phase-in. The NCUA will use the phase-in to determine the FICU’s net worth category

under § 702.102 or § 702.202 (for FICUs statutorily defined as “new”). To be eligible for the transition provision, the FICU must record a reduction in retained earnings due to the adoption of CECL.

### C. NCUA Implementation of the Transition Provisions

Eligible FICUs would not have the option of electing whether to opt-into (or out of) the transition provisions. Although this differs from the other banking agencies’ rule, it is consistent with the goal of this rulemaking to mitigate disruptions caused by CECL adoption. As noted, eligibility for the transition provision is limited to those FICUs for which the phase-in is truly necessary—that is, they will experience a reduction in retained earnings as a result of CECL. The Board believes that requiring these FICUs to affirmatively opt-into the transition provisions would constitute an unnecessary administrative exercise to confirm their already obvious need for the phase-in. Automatic implementation of the phase-in by the NCUA will help to ensure its uniform application and that its benefits are provided to the greatest possible number of eligible FICUs.

The final rule issued by the other banking agencies relies on banking organizations to calculate the phase-in amounts. In contrast, the NCUA will make the required phase-in calculations. As above, the Board has determined that this will help ensure the uniform implementation of the phase-in, as well as facilitate the accurate calculation of the transition amounts.

### D. Mechanics of the CECL Transition Provisions

To calculate the transitional amount under the CECL transition provision, the NCUA will compare the differences in a FICU’s retained earnings between: (1) The FICU’s closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount); and (2) the FICU’s balance sheet amount as of the beginning of the fiscal year in which the FICU adopts CECL (post-CECL amount). The difference in retained earnings constitutes the transitional amount that would be phased-in to the net worth ratio calculation over the proposed transition period, which would be the three-year period (twelve quarters) beginning the first day of the fiscal year in which the FICU adopts CECL. Specifically, a FICU’s CECL transitional amount would be the difference between the pre-CECL and post-CECL amounts of retained earnings.

The NCUA will phase-in the FICU’s CECL transitional amount. The NCUA would also phase-in the CECL transitional amount to the FICU’s total assets for purposes of the net worth ratio. Both the FICU’s retained earnings and total assets would be deemed increased by the CECL transitional amount. The CECL transitional amount would be phased-in over the transition period on a straight-line basis automatically as part of the Call Report.

As noted, FICUs are currently required to commence implementation of the standard for fiscal years beginning after December 15, 2022. In determining the net worth ratio of a FICU, the NCUA will deem retained earnings and total assets as reported on the Call Report to be increased by 100 percent of the FICU’s CECL transitional amount during the first three reporting quarters of the fiscal year in which the FICU adopts CECL. The FICU may use this period to build capital and to make resulting material adjustments to its CECL transitional amount. The NCUA will base its subsequent calculations regarding the phase-in based on the CECL transitional amount reported by the FICU as of the fourth reporting quarter of the fiscal year in which the FICU adopts CECL, and further adjustments to the amount are not permitted.

Beginning with the fourth reporting quarter of the fiscal year in which the FICU adopts CECL, the NCUA will deem retained earnings and total assets to be increased by 67 percent of the FICU’s CECL transitional amount. This percentage will be decreased to 33 percent beginning with the fourth quarterly Call Report of the following fiscal year (the eighth reporting quarter of the FICU’s CECL implementation). Commencing with the twelfth reporting quarter of the FICU’s CECL implementation, the FICU’s net worth ratio will completely reflect the day-one effects of CECL. All other items remaining equal, this computation will result in a gradual phase-in of the CECL day-one effects.

### E. Example of Transition Schedule

As an example of the proposed phase-in, consider a hypothetical FICU that has a calendar fiscal year. On the closing balance sheet date immediately prior to adopting CECL, the FICU has \$10 million in retained earnings and \$1 million of Allowance for Loan and Lease Losses (ALLL) (*i.e.*, credit loss). On the opening balance sheet date of January 1, 2023, immediately after adopting CECL, the FICU determined it needs \$1.2 million of allowance for credit losses. The FICU would recognize

<sup>30</sup> *Supra* note 1, at 50965.

the adoption of CECL by recording a reduction in beginning retained earnings of \$200,000. For each of the first three quarterly reporting periods in 2023, the NCUA would deem both the FICU's retained earnings and total assets to be increased by the full \$200,000. Commencing with the fourth quarterly Call Report submitted in 2023 the FICU's retained earnings and total assets would be deemed increased by \$134,000

(\$200,000 × 67 percent), for purposes of calculating the FICU's net worth ratio. The \$134,000 increase would remain constant for the first three quarters in 2024. Starting with the fourth quarterly Call Report in 2024, retained earnings and total assets would be deemed increased by \$66,000 (\$200,000 × 33 percent). Using the same mathematical equation, the \$66,000 increase would remain constant for the first three

quarters in 2025. Upon the FICU's submission of its fourth quarterly report in 2025, there would be zero increase in retained earnings and total assets, thus the FICU's net worth ratio will completely reflect the day-one effects of CECL.

Table 1 presents the example above in tabular format:

TABLE 1—EXAMPLE OF A CECL TRANSITION PROVISION SCHEDULE  
[Calendar fiscal year]

In thousands	Transitional amount	Transitional amounts applicable during each quarter of the transition period (12 quarters total)			
		Quarters 1–3	Quarters 4–7	Quarters 8–11	Quarter 12
		First three quarters of 2023	Four quarters at 67% (4th quarter of 2023 and first three quarters of 2024)	Four quarters at 33% (4th quarter of 2024 and first three quarters of 2025)	Full recognition of day-one adjustment (commencing 4th quarter of 2025)
Increase retained earnings and total assets by the CECL transitional amount ...	\$200	\$200	\$134	\$66	0

**F. Statutory Limit on Amount of Net Worth Ratio Change**

Section 216 of the FCU Act limits any change to the net worth ratio thresholds for each of the five net worth categories to “an amount that is equal to not more than the difference between the required minimum level most recently established by the Federal banking agencies and 4 percent of total assets (with respect to institutions regulated by those agencies).”<sup>31</sup> The limitation is not applicable to this final rule because, as noted above, the Board is following the lead of the other banking agencies and not modifying any specific net worth ratio threshold amount. Therefore, applying this element would be impracticable and would frustrate the purpose of the statutory provision. While the effect of the proposed regulatory amendments will be to adjust the calculation of the net worth ratios and, in some instances, the resultant net worth classifications, the actual numeric threshold amounts will remain the same. For example, a FICU will continue to be “well capitalized” if its net worth ratio is 7 percent or higher and it meets any applicable risk-based net worth requirement.

**G. NCUA Oversight**

For purposes of determining whether a FICU is in compliance with its PCA requirements, the NCUA will use the FICU's net worth ratio as adjusted by the CECL transition provision. Through the supervisory process, the NCUA will

continue to examine credit loss estimates and allowance balances regardless of whether the FICU is subject to the CECL transition provision. In addition, the NCUA may examine whether FICUs will have adequate amounts of capital at the expiration of their CECL transition provision period.

**H. Small FICU Determination of Charges for Loan Losses**

As discussed, section 202 of the FCU Act provides an exception for FICUs with less than \$10 million in total assets to the general requirements that reports and statements filed with the Board comply with GAAP. As also noted above, the Board's regulations in § 702.402 require that charges for loan losses be made in accordance with GAAP and does not distinguish between the asset size of FICUs. The Board, however, is aware that compliance with GAAP may be burdensome for smaller FICUs. This difficulty is likely to be exacerbated with the adoption of CECL. Accordingly, the final rule provides that FICUs with total assets of less than \$10 million may make charges for loan losses either in accordance with GAAP or with any reasonable reserve methodology (incurred loss) provided it adequately covers known and probable loan losses. This provision will eliminate the adverse PCA consequences for smaller FICUs resulting from CECL, and these FICUs will not be subject to the phase-in procedure detailed above.

The Board does note, however, that pursuant to section 202 state-chartered, federally insured credit unions subject

to state laws and regulations may be required to comply with GAAP or other accounting standards under applicable State requirements. These credit unions are eligible for the phase-in.

**VI. Department of the Treasury Report**

The Senate Committee Report to the Financial Services and General Government Appropriations Act, 2020,<sup>32</sup> directs the Department of the Treasury, in consultation with the other banking agencies and the NCUA to “conduct a study on the need, if any, for changes to regulatory capital requirements necessitated by CECL.”<sup>33</sup> The Department of the Treasury issued its report on September 15, 2020.<sup>34</sup>

While the report affirms the Department of the Treasury's support for the goals of CECL, it also acknowledged that a “definitive assessment of the impact of CECL on regulatory capital is not currently feasible, in light of the state of CECL implementation across financial institutions and current market dynamics.”<sup>35</sup> Accordingly, the report provides that the Department of the Treasury “will continue to actively monitor CECL implementation and

<sup>32</sup> Division C of the Consolidated Appropriations Act, 2020; Public Law 116–93, approved December 20, 2019.

<sup>33</sup> Senate Report 116–111, at page 11.

<sup>34</sup> U.S. Department of the Treasury, “The Current Expected Credit Loss Accounting Standard and Financial Institution Regulatory Capital” (2020). The report is available at: <https://home.treasury.gov/system/files/216/The-CECL-Accounting-Standard-and-Financial-Institution-Regulatory-Capital-Study-9-15-20.pdf>.

<sup>35</sup> *Id.*, at page 5.

<sup>31</sup> 12 U.S.C. 1790d(c)(2)(A).

consult with relevant stakeholders, including the prudential regulators, FASB, and the SEC.”<sup>36</sup> Among other recommendations, the report suggests that the prudential regulators “monitor the use and impact of transitional relief granted, and extend or amend the relief, as necessary.”<sup>37</sup> Further, the report provides that “FASB, together with the prudential regulators, should examine the application of CECL to smaller lenders.” The report highlights FICUs and community banks in this regard, noting that the NCUA and the FDIC have separately asked for relief from FASB.<sup>38</sup>

This final rule is consistent with the Department of the Treasury’s report, particularly with respect to the recommendation regarding transitional relief. The Board will continue to assess the impacts of CECL on regulatory capital and will consider these—and any other future recommendations made by the Department of the Treasury—in taking further action to address the impacts of CECL implementation on the credit union industry.

## VII. Regulatory Procedures

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>39</sup> For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.<sup>40</sup> The Board fully considered the potential economic impacts of the proposed phase-in on small credit unions during the development of the final rule. For example, the rule would, to the extents authorized by statute, completely exempt some of the smallest FICUs (*i.e.*, those with total assets less than \$10 million) from the adverse effects of CECL. Accordingly, NCUA certifies that it would not have a significant economic impact on a substantial number of small credit unions.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.<sup>41</sup> For purposes of the PRA, a paperwork burden may take the form of a reporting,

disclosure or recordkeeping requirement, each referred to as an information collection. The changes to part 702 may revise existing information collection requirements to the Call Report. Should changes be made to the Call Report, they will be addressed in a separate **Federal Register** notice. The revisions to the Call Report will be submitted for approval by the Office of Information and Regulatory Affairs at the Office of Management and Budget prior to their effective date.

### C. Executive Order 13132, on Federalism

Executive Order 13132<sup>42</sup> 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. The final rule would 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 Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

### D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>43</sup>

### E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>44</sup> 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 section 551 of the Administrative Procedure Act.<sup>45</sup> 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 has submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a “major rule” for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

### List of Subjects in 12 CFR Part 702

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 24th day of June 2021.

**Melane Conyers-Ausbrooks,**  
*Secretary of the Board.*

For the reasons discussed above, the NCUA amends 12 CFR part 702 as follows:

## PART 702—CAPITAL ADEQUACY

■ 1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1790d.

■ 2. Revise § 702.402(d)(1) to read as follows:

### § 702.402 Full and Fair disclosure of financial condition.

\* \* \* \* \*

(d) \* \* \*

(1)(i) Federally insured credit unions with total assets of \$10 million or greater shall make charges for loan losses in accordance with generally accepted accounting principles (GAAP);

(ii) Federally insured credit unions with total assets of less than \$10 million shall make charges for loan losses in accordance either with either:

(A) Any reasonable reserve methodology (incurred loss) provided it adequately covers known and probable loan losses; or

(B) In the case of Federally insured, State-chartered credit unions, any other applicable standard under State law or regulation;

\* \* \* \* \*

■ 3. Add subpart G, consisting of §§ 702.701 through 702.703, to read as follows:

### Subpart G—CECL Transition Provisions

Sec.

702.701 Authority, purpose, and scope.

702.702 Definitions.

702.703 CECL transition provisions.

### § 702.701 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the National Credit Union Administration Board pursuant to section 216 of the Federal Credit Union

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at pages 28–29.

<sup>39</sup> 5 U.S.C. 603(a).

<sup>40</sup> 80 FR 57512 (Sept. 24, 2015).

<sup>41</sup> 44 U.S.C. 3501–3520.

<sup>42</sup> Executive Order 13132 on Federalism was signed by former President Clinton on August 4, 1999, and subsequently published in the **Federal Register** on August 10, 1999 (64 FR 43255).

<sup>43</sup> Public Law 105–277, 112 Stat. 2681 (1998).

<sup>44</sup> Public Law 104–121, 110 Stat. 147 (1996).

<sup>45</sup> 5 U.S.C. 551.

Act, 12 U.S.C. 1790d, as added by section 301 of the Credit Union Membership Access Act, Public Law 105-219, 112 Stat. 913 (1998).

(b) *Purpose.* This subpart provides for the phase in of the adverse effects on the regulatory capital of federally insured credit unions that may result from the adoption of the current expected credit losses (CECL) accounting methodology.

(c) *Scope.* (1) The transition provisions of this subpart apply to Federally insured credit unions, whether Federally or State-chartered, including credit unions defined as “new” pursuant to section 1790d(b)(2) that make charges for loan losses in accordance with:

(i) Generally accepted accounting principles (GAAP) under § 702.402(d)(1)(i); or

(ii) In the case of Federally-insured, State-chartered credit unions, any other applicable standard under State law or regulation under § 702.402(d)(1)(ii)(B).

(2) The transition provisions of this subpart do not apply to Federally-insured credit unions, whether Federally or State-chartered, including credit unions defined as “new” pursuant to section 1790d(b)(2), that make charges for loan losses using a reasonable reserve methodology under § 702.402(d)(1)(ii)(A).

#### § 702.702 Definitions.

In addition to the definitions set forth in § 702.2, the following definitions apply to this subpart:

*Current Expected Credit Losses (CECL)* means the current expected credit losses methodology under GAAP.

*CECL transitional amount* means the decrease of a credit union’s retained earnings resulting from its adoption of CECL, as determined pursuant to § 702.703(b).

*Transition period* means the 12-quarter reporting period beginning the first day of the fiscal year in which the credit union adopts CECL.

#### § 702.703 CECL transition provisions.

(a) *Eligibility*—The NCUA shall use the transition provisions of this subpart in determining a credit union’s net worth category under this part, as applicable, if:

(1) The credit union has not adopted CECL before its first fiscal year beginning after December 15, 2022; and

(2) The credit union records a reduction in retained earnings due to the adoption of CECL.

(b) *Determination of CECL transition amount.* (1) For purposes of calculating the first three quarters of the transition period, as described in paragraph (c)(1) of this section, the CECL transitional

amount is equal to the difference between the credit union’s retained earnings as of the beginning of the fiscal year in which the credit union adopts CECL and the credit union’s retained earnings as of the closing of the fiscal year immediately prior to the credit union’s adoption of CECL.

(2) For purposes of calculating the fourth through twelfth quarters of the transition period, as described in paragraphs (c)(2) and (c)(3) of this section, the CECL transitional amount is equal to the difference between the credit union’s retained earnings as of the end of the fiscal year in which the credit union adopts CECL and the credit union’s retained earnings as of the beginning of its next fiscal year.

(c) *Calculation of CECL transition provision.* In determining the net worth category of a credit union as provided in paragraph (a) of this section, the NCUA shall:

(1) Increase retained earnings and total assets as reported on the Call Report for purposes of the net worth ratio by 100 percent of its CECL transitional amount during the first three quarters of the transition period (first three reporting quarters of the fiscal year in which the credit union adopts CECL);

(2) Increase retained earnings and total assets as reported on the Call Report for purposes of the net worth ratio by sixty-seven percent of its CECL transitional amount during the second four quarters of the transition period (fourth reporting quarter of the fiscal year in which the credit union adopts CECL and first three reporting quarters of the next fiscal year); and

(3) Increase retained earnings and total assets as reported on the Call Report for purposes of the net worth ratio by thirty-three percent of its CECL transitional amount during the final four quarters of the transition period.

[FR Doc. 2021-13907 Filed 6-30-21; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0540; Project Identifier MCAI-2021-00694-T; Amendment 39-21635; AD 2021-14-08]

RIN 2120-AA64

#### Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A319-151N, A319-153N, A319-171N, A320-251N, A320-252N, A320-253N, A320-271N, A320-272N, A320-273N, A321-251N, A321-251NX, A321-252N, A321-252NX, A321-253N, A321-253NX, A321-271N, A321-271NX, A321-272N and A321-272NX airplanes. This AD was prompted by reports of an increasing number of operational disruptions due to airspeed discrepancies. This AD requires revising the existing airplane flight manual (AFM) to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD becomes effective July 1, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 1, 2021.

The FAA must receive comments on this AD by August 16, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for

and locating Docket No. FAA–2021–0540.

### Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0540; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above.

### FOR FURTHER INFORMATION CONTACT:

Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email [Sanjay.Ralhan@faa.gov](mailto:Sanjay.Ralhan@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0150, dated June 21, 2021; corrected June 25, 2021 (EASA AD 2021–0150) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N and A321–272NX airplanes.

EASA and Airbus issued various communication documents (respectively EASA Safety Information Bulletin (SIB) 2020–14, Airbus Operators Information Transmission (OIT) 999.0048/20, Airbus Operational Training Transmission (OTT) 999.0025/21, and Airbus Flight Operations Transmission (FOT) 999.0020/21) to remind operators to apply appropriate procedures for returning airplanes to service from short term or long term storage/parking, including procedures to inspect the pitot static system. However, an increasing number of operational disruptions have been reported, due to contaminated air data system, caused by lack of application of appropriate maintenance procedures for returning airplanes to service.

This AD was prompted by reports of an increasing number of operational disruptions due to airspeed discrepancies after airplanes have been parked or stored (a large number of airplanes have been parked or stored due to the COVID–19 pandemic).

Consistent erroneous airspeed indications (which stands for 2 or 3 pitot probes delivering erroneous speed information within the same speed range) may adversely affect airplane response, in particular during the rotation phase. The FAA is issuing this AD to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

### Related Service Information Under 1 CFR Part 51

EASA AD 2021–0150 describes procedures for, among other actions, revising the AFM to include a procedure to reinforce the airspeed check during the take-off phase and provide instructions to abort take-off in certain cases (e.g., an unreliable airspeed situation or certain airspeed differences).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA’s Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

### Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0150 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under “Differences Between this AD and the MCAI.”

### Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0150

is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0150 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0150 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2021–0150. Service information required by EASA AD 2021–0150 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0540 after this AD is published.

### Differences Between This AD and the MCAI

Paragraph (3) of EASA AD 2021–0150 requires revising the minimum equipment list (MEL) to incorporate an EASA master minimum equipment list (MMEL) change to mandate that the integrated standby instrument system (ISIS) airspeed indication must be operative. However, the FAA MMEL does not provide relief for an inoperative ISIS airspeed indication function. Therefore, paragraph (3) of EASA AD 2021–0150 is unnecessary for this AD.

EASA AD 2021–0150 requires operators to “inform all flight crews” of revisions to the AFM and thereafter to “operate the aeroplane accordingly.” However, this AD does not specifically require those actions as those actions are already required by FAA regulations.

FAA regulations require operators furnish to pilots any changes to the AFM (ex: 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (ex: 14 CFR 91.505). As with any other training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot’s training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the AFM.

Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such requirements in

an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

**FAA’s Justification and Determination of the Effective Date**

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because consistent erroneous airspeed indications may adversely affect airplane response, in particular during the rotation phase. This unsafe condition is particularly prevalent in the large number of airplanes that are returning to service after airplanes have been parked or stored due to the COVID-19 pandemic. Without reinforcing the airspeed check and providing instructions to abort take-off in certain cases, airspeed discrepancies could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2021-0540; Project Identifier MCAI-2021-00694-T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA

will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email [Sanjay.Ralhan@faa.gov](mailto:Sanjay.Ralhan@faa.gov). Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Explanation of Special Flight Permit Limitation**

Once the compliance time specified in this AD has passed, special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed. As a result of the COVID-19 pandemic, a large numbers of airplanes have been put in storage. For those airplanes removed from storage after the compliance time specified in this AD has passed, operators must incorporate the AFM revision required by this AD before further flight.

**Interim Action**

The FAA considers this AD interim action and further AD action might follow.

**Regulatory Flexibility Act (RFA)**

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

**Costs of Compliance**

The FAA estimates that this AD affects 204 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85 .....	\$0	\$85	\$17,340

**Authority for This Rulemaking**

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds

necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021–14–08 Airbus SAS:** Amendment 39–21635; Docket No. FAA–2021–0540; Project Identifier MCAI–2021–00694–T.

#### (a) Effective Date

This airworthiness directive (AD) becomes effective July 1, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to all Airbus SAS Model A319–151N, A319–153N, A319–171N, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N and A321–272NX airplanes, certificated in any category.

#### (d) Subject

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

#### (e) Reason

This AD was prompted by reports of an increasing number of operational disruptions due to airspeed discrepancies that have occurred due to the large number of airplanes returning to service after airplanes have been parked or stored (a large number of airplanes

have been parked or stored due to the COVID–19 pandemic). The FAA is issuing this AD to address airspeed discrepancies, which could lead to an unstable flight path after take-off, possibly resulting in reduced control of the airplane.

#### (f) Compliance

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

#### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0150, dated June 21, 2021; corrected June 25, 2021 (EASA AD 2021–0150).

#### (h) Exceptions to EASA AD 2021–0150

(1) Where EASA AD 2021–0150 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (1) of EASA AD 2021–0150 specifies amending “the applicable AFM [airplane flight manual],” but this AD requires amending “the existing applicable AFM and applicable corresponding operational procedures.”

(3) Paragraph (3) of EASA AD 2021–0150 does not apply to this AD.

(4) The “Remarks” section of EASA AD 2021–0150 does not apply to this AD.

(5) Where paragraph (1) of EASA AD 2021–0150 specifies to “inform all flight crews, and, thereafter, operate the aeroplane accordingly,” this AD does not require those actions as those actions are already required by existing FAA operating regulations.

#### (i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed after 7 days after the effective date of this AD unless the AFM revision required by paragraph (g) of this AD is accomplished.

#### (j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or

EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

#### (k) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email [Sanjay.Ralhan@faa.gov](mailto:Sanjay.Ralhan@faa.gov).

#### (l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0150, dated June 21, 2021; corrected June 25, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0150, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0540.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on June 28, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–14158 Filed 6–29–21; 11:15 am]

**BILLING CODE 4910–13–P**



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2020-1126; Airspace  
Docket No. 19-ANM-10]

RIN 2120-AA66

**Amendment of Class E airspace; Great Falls, MT**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E airspace, designated as an extension to a Class D or Class E surface area, at Great Falls International Airport. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Additionally, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. This action removes the Great Falls VORTAC from the Class E4 and Class E5 text headers and airspace descriptions. Further, this action removes Malmstrom AFB from the Class E5 text header and airspace description. Lastly, this action implements several administrative corrections to the airspaces' legal descriptions.

**DATES:** Effective 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [https://www.faa.gov/air\\_traffic/publications/](https://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**FOR FURTHER INFORMATION CONTACT:**

Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231-3695.

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class E airspace at Great Falls International Airport, Great Falls, MT, to ensure the safety and management of IFR operations at the airport.

**History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 3891, January 15, 2021) for Docket No. FAA-2020-1126 to modify the Class E airspace at Great Falls International Airport, Great Falls, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication of the NPRM, the FAA identified an error in the description for the airspace extending upward from 700 feet above the surface. In the NPRM a portion of this airspace was described as "within 8 miles south and 4 miles north of the 222° from the airport, extending from 2.6 miles southwest of the airport to 18.7 miles southwest of the airport." The Final Rule corrects this description to read "within 8 miles south and 4 miles north of the 225° bearing from the airport, extending from 2.6 miles southwest of the airport to 18.7 miles southwest of the airport."

Class D, E4, and E5 airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

**Availability and Summary of Documents for Incorporation by Reference**

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020,

and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Rule**

This amendment to 14 CFR part 71 modifies the Class E airspace, designated as an extension to a Class D or Class E surface area, at Great Falls International Airport. This action reduces the size of the area to properly contain IFR aircraft descending below 1,000 feet above the surface.

This action also modifies the Class E airspace extending upward from 700 feet above the surface. This action significantly reduces the size of this area to properly contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface.

Additionally, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. This action reduces the size of this area to properly contain IFR aircraft transitioning to/from the terminal and en route environments.

This action also removes the Great Falls VORTAC from the Class E4 and Class E5 text headers and airspace descriptions. The Navigational Aid (NAVAID) is not needed to describe the airspace areas. Removal of the NAVAID allows the airspace to be described from a single point, which simplifies the airspaces' descriptions.

Further, this action removes Malmstrom AFB from the Class E5 text header and airspace description. Reference to Malmstrom AFB is not needed to describe the airspace area. Removal of Malmstrom AFB allows the airspace to be described from a single point, which simplifies the airspace's description.

Lastly, this action implements several administrative amendments to the airspaces' legal descriptions. The first line of the Class D and Class E4 text headers is amended to remove the airport name. The airport's geographic coordinates in the Class D, Class E4, and Class E5 text header are updated to lat. 47°28'56" N, long. 111°22'13" W.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are



necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

##### ANM MT D Great Falls, MT [Amended]

Great Falls International Airport, MT  
(Lat. 47°28'56" N, long. 111°22'13" W)

That airspace extending upward from the surface to and including 6,200 feet MSL within a 5.5-mile radius of Great Falls International Airport.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

##### ANM MT E4 Great Falls, MT [Amended]

Great Falls International Airport, MT  
(Lat. 47°28'56" N, long. 111°22'13" W)

That airspace extending upward from the surface within 1 mile each side of the 224° bearing from the airport, extending from the 5.5-mile radius to 9.6 miles southwest of Great Falls International Airport.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

##### ANM MT E5 Great Falls, MT [Amended]

Great Falls International Airport, MT  
(Lat. 47°28'56" N, long. 111°22'13" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the airport, and within 3.4 miles each side of the 047° bearing from the airport, extending from the 7-mile radius to 12 miles northeast of the airport, and within 8 miles south and 4 miles north of the 225° bearing from the airport, extending from 2.6 miles southwest of the airport to 18.7 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 48-mile radius of Great Falls International Airport.

Issued in Des Moines, Washington, on June 25, 2021.

**B.G. Chew,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2021–14069 Filed 6–30–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 31376; Amdt. No. 3962]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria,

or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 1, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2021.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

#### For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

#### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at [nfdc.faa.gov](http://nfdc.faa.gov) to register.

Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

#### 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 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete

regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes

contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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 97**

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 11, 2021.

**Wade E.K. Terrell,**

*Aviation Safety, Flight Standards Service, Manager (A), Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \* *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7/15/2021 .....	NY	Wurtsboro .....	Wurtsboro-Sullivan County .....	1/1965	4/27/2021	This NOTAM, published in Docket No. 31374, Amdt No. 3960, TL 21–15, (86 FR 33503; June 25, 2021) is hereby rescinded in its entirety.
7/15/2021 .....	IA	Mason City .....	Mason City Muni .....	1/5288	4/27/2021	This NOTAM, published in Docket No. 31374, Amdt No. 3960, TL 21–15, (86 FR 33503; June 25, 2021) is hereby rescinded in its entirety.
7/15/2021 .....	KS	Hugoton .....	Hugoton Muni .....	1/5928	4/23/2021	This NOTAM, published in Docket No. 31374, Amdt No. 3960, TL 21–15, (86 FR 33503; June 25, 2021) is hereby rescinded in its entirety.
7/15/2021 .....	FL	Lake City .....	Lake City Gateway .....	1/7904	5/12/2021	This NOTAM, published in Docket No. 31374, Amdt No. 3960, TL 21–15, (86 FR 33503; June 25, 2021) is hereby rescinded in its entirety.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15-Jul-21 .....	VI	Charlotte Amalie .....	Cyril E King .....	1/0192	5/27/21	ILS OR LOC RWY 10, Amdt 1B.
15-Jul-21 .....	CA	Willits .....	Ells Fld-Willits Muni .....	1/0906	5/25/21	RNAV (GPS) RWY 34, Amdt 1C.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/2541	5/25/21	VOR RWY 9, Amdt 4E.
15-Jul-21 .....	NY	New York .....	John F Kennedy Intl .....	1/3949	5/28/21	RNAV (GPS) X RWY 22L, Orig.
15-Jul-21 .....	NY	Wurtsboro .....	Wurtsboro-Sullivan County .....	1/4012	5/28/21	VOR/DME OR GPS RWY 5, Orig.
15-Jul-21 .....	IA	Mason City .....	Mason City Muni .....	1/4035	6/4/21	RNAV (GPS) RWY 30, Amdt 1C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4714	4/27/21	ILS OR LOC/DME RWY 12, Amdt 9B.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4717	4/27/21	RNAV (GPS) RWY 1L, Orig-C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4719	4/27/21	RNAV (GPS) RWY 12, Amdt 1C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4720	4/27/21	RNAV (GPS) RWY 19R, Orig-B.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4723	4/27/21	RNAV (GPS) Y RWY 1C, Amdt 1C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4724	4/27/21	RNAV (GPS) Y RWY 1R, Amdt 1C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4726	4/27/21	RNAV (GPS) Y RWY 19C, Amdt 3D.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4727	4/27/21	RNAV (GPS) Y RWY 19L, Amdt 2B.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4728	4/27/21	VOR/DME RWY 12, Amdt 9C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4960	6/1/21	ILS OR LOC/DME RWY 1C, Amdt 2C.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4961	6/1/21	ILS OR LOC RWY 1R, Amdt 24B.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4962	6/1/21	ILS OR LOC/DME RWY 1L, Amdt 1B.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4963	6/1/21	ILS OR LOC/DME RWY 19C, Amdt 25A.
15-Jul-21 .....	DC	Washington .....	Washington Dulles Intl .....	1/4965	6/1/21	ILS OR LOC/DME RWY 19R, Amdt 1A.
15-Jul-21 .....	VI	Charlotte Amalie .....	Cyril E King .....	1/5726	5/27/21	VOR-A, Amdt 14C.
15-Jul-21 .....	NC	Mount Olive .....	Mount Olive Muni .....	1/8210	5/27/21	RNAV (GPS) RWY 23, Orig-B.
15-Jul-21 .....	NC	Mount Olive .....	Mount Olive Muni .....	1/8211	5/27/21	RNAV (GPS) RWY 5, Orig-C.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/8908	5/25/21	RNAV (GPS) RWY 23, Orig-E.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/8909	5/25/21	RNAV (GPS) RWY 27, Amdt 2D.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/8910	5/25/21	RNAV (GPS) RWY 9, Amdt 2E.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/8911	5/25/21	RNAV (GPS) RWY 5, Orig-G.
15-Jul-21 .....	FL	Lakeland .....	Lakeland Linder Intl .....	1/8912	5/25/21	VOR RWY 27, Amdt 7H.
15-Jul-21 .....	ME	Old Town .....	Dewitt Fld/Old Town Muni .....	1/9332	5/25/21	RNAV (GPS) RWY 12, Orig-B.
15-Jul-21 .....	ME	Old Town .....	Dewitt Fld/Old Town Muni .....	1/9333	5/25/21	RNAV (GPS) RWY 22, Orig-A.
15-Jul-21 .....	ME	Old Town .....	Dewitt Fld/Old Town Muni .....	1/9334	5/25/21	RNAV (GPS) RWY 30, Orig-B.
15-Jul-21 .....	ME	Old Town .....	Dewitt Fld/Old Town Muni .....	1/9335	5/25/21	VOR/DME RWY 22, Amdt 5B.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9384	5/25/21	ILS OR LOC RWY 10, Amdt 2D.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9385	5/25/21	VOR-A, Amdt 1B.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9386	5/25/21	RNAV (GPS) RWY 10, Orig-A.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9389	5/25/21	RNAV (GPS) RWY 28, Orig-B.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9390	5/25/21	RNAV (GPS) RWY 32, Orig-D.
15-Jul-21 .....	NJ	Millville .....	Millville Muni .....	1/9391	5/25/21	RNAV (GPS) RWY 14, Orig-F.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9557	5/27/21	ILS OR LOC RWY 35, Amdt 7.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9558	5/27/21	RNAV (GPS) RWY 4, Amdt 1C.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9562	5/27/21	RNAV (GPS) RWY 17, Amdt 2B.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9563	5/27/21	RNAV (GPS) RWY 35, Amdt 1.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9564	5/27/21	VOR RWY 17, Amdt 1A.
15-Jul-21 .....	GA	Valdosta .....	Valdosta Rgnl .....	1/9565	5/27/21	VOR RWY 35, Amdt 1A.
15-Jul-21 .....	MT	West Yellowstone ...	Yellowstone .....	1/9766	5/27/21	ILS OR LOC RWY 1, Amdt 4A.

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31375; Amdt. No. 3961]

**Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 1, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2021.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**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 73169. Telephone (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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.

**Lists of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 11, 2021.

**Wade E.K. Terrell,**

*Aviation Safety, Flight Standards Service, Manager (A), Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 12 August 2021*

Atlanta, GA, Dekalb-Peachtree, Takeoff Minimums and Obstacle DP, Amdt 3A  
Atlanta, GA, KCVV, RNAV (GPS) RWY 10, Amdt 2  
Atlanta, GA, KCVV, RNAV (GPS) RWY 28, Amdt 2  
Atlanta, GA, KCVV, VOR/DME RWY 10, Amdt 5B, CANCELLED  
Evansville, IN, KEVV, RADAR–1, Amdt 7B  
Norwood, MA, Norwood Meml, Takeoff Minimums and Obstacle DP, Amdt 8  
Mora, MN, Mora Muni, RNAV (GPS) RWY 35, Orig-D  
Hillsboro, ND, 3H4, RNAV (GPS) RWY 16, Amdt 2A  
Lincoln Park, NJ, Lincoln Park, Takeoff Minimums and Obstacle DP, Amdt 2  
Middlefield, OH, 7G8, RNAV (GPS) RWY 11, Orig-C  
Middlefield, OH, 7G8, RNAV (GPS) RWY 29, Orig-C

[FR Doc. 2021–13995 Filed 6–30–21; 8:45 am]

**BILLING CODE 4910–13–P**

**RAILROAD RETIREMENT BOARD****20 CFR Part 295**

**RIN 3220—AB69**

**Payments Pursuant to Court Decree or Court-Approved Property Settlement**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) amends its regulations addressing who may receive a portion of an employee annuity due to a former spouse of a railroad annuitant under a court decree of divorce or court-approved property settlement, but which was unpaid at the time of the former spouse's death. The current regulation states that the Board will follow the priority order provided for employee annuities unpaid at death in the Board's regulations. This amendment is necessary to insert a correct reference to the proper section of the Board's regulations pertaining to employee annuities due but unpaid at death.

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

**ADDRESSES:** Stephanie Hillyard, Secretary to the Board, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–1275, (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:****Background Information**

The Railroad Retirement Act (RRA) provides monthly annuities for railroad employees based on age and years of service in the railroad industry. Section 14(b)(2) of the RRA [45 U.S.C. 231m(b)(2)] provides that portions of an employee annuity calculated under sections 2(b), 3(b), 3(f), and 3(h) of the RRA [45 U.S.C. 231a(b), 231b(b), 231b(f), and 231b(h)] may be characterized as community property and subject to distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The current version of Board regulations at 20 CFR 295.1 through 295.7 implement this provision.

The current version of section 295.5(d) of the Board's regulations explains that payments to a spouse or former spouse pursuant to a court order will not be made to the heirs, legatees, creditors, or assignees of a deceased spouse or former spouse. Any annuity amounts due to the spouse or former spouse but unpaid at the time of the spouse or former spouse's death will be made in accordance with the Board's regulations governing payments of employee annuities due but unpaid at the death of the employee. At the time § 295.5(d) was published in the **Federal Register**, the Board's regulations

governing employee annuities due but unpaid at death were found in § 234.1 of the Board's regulations. Part 234 of the Board's regulations has since been amended and the section governing employee annuities due but unpaid at death is now designated as § 234.31 of the Board's regulations.

**Final Rule**

We are amending § 295.5(d) of the Board's regulations to provide the correct cross-reference to the section of the Board's regulations governing employee annuities due but unpaid at death. This change is not intended to be substantive.

This change was published as a proposed rule on December 9, 2016, and comments were invited to be submitted by February 7, 2017. See 81 FR 89014 (December 9, 2016). No comments were submitted, and the final rule is the same as the proposed rule. Because this final rule is not a substantive change, but is merely a correction of a citation, it becomes effective on the date this notice of rulemaking is published in the **Federal Register**.

**Regulatory Procedures**

*Executive Order 12866, as Amended*

The Office of Management and Budget has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required.

*Regulatory Flexibility Act*

The Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This final rule imposes no reporting or recordkeeping requirements subject to OMB clearance.

**List of Subjects in 20 CFR Part 295**

Railroad retirement.

For the reasons stated in the preamble, the Railroad Retirement Board amends 20 CFR part 295 as follows:

**PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED SETTLEMENT**

■ 1. The authority citation for part 295 continues to read as follows:

**Authority:** 45 U.S.C. 231f; 45 U.S.C. 231m.

**§ 295.5 [Amended]**

■ 2. In § 295.5(d), remove “§ 234.1” and add in its place “§ 234.31”.

Dated: June 17, 2021.

By Authority of the Board.

**Stephanie Hillyard,**

*Secretary to the Board.*

[FR Doc. 2021–13231 Filed 6–30–21; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 92

[Docket No. FR–6249–C–03]

RIN 2529–AB01

#### Restoring Affirmatively Furthering Fair Housing Definitions and Certifications

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Interim final rule; correction.

**SUMMARY:** On June 23, 2021, HUD published a document to correct an amendatory instruction appearing in its Restoring Affirmatively Furthering Fair Housing Definitions and Certifications interim final rule, which published on June 10, 2021. In that document, HUD incorrectly referenced the **Federal Register** publication date for its interim final rule. For the convenience of the public, this document republishes HUD’s June 23, 2021, correction with the corrected publication dates.

**DATES:** Effective July 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** On June 10, 2021 (86 FR 30779), HUD published its Restoring Affirmatively Furthering Fair Housing Definitions and Certifications interim final rule. Following publication, the **Federal Register** alerted HUD to an error in the amendatory instruction for revisions to 24 CFR 92.508. Specifically, the amendatory instruction directed that paragraph (a)(7)(i)(C) be revised, however, the revision being made by the interim final rule is to paragraph (a)(7)(i)(B). This document corrects the

amendatory instructions for 24 CFR 92.508 to reflect the correct paragraph being revised.

#### Correction

In FR Doc. 2021–12114 appearing on page 30779 in the **Federal Register** on June 10, 2021, the following correction is made:

#### § 92.508 [Corrected]

■ On page 30792, in the second column, after the title for part 92, in amendment 11, the instruction “Amend § 92.508 by revising paragraph (a)(7)(i)(C) to read as follows:” is corrected to read “Amend § 92.508 by revising paragraph (a)(7)(i)(B) to read as follows:”

**Aaron Santa Anna,**

*Associate General Counsel for Legislation and Regulations.*

[FR Doc. 2021–14011 Filed 6–30–21; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 48

[212A2100DD; AAKC001030; AOA501010.999900]

RIN 1076–AF55

#### Use of Bureau-Operated Schools by Third Parties Under Lease Agreements and Fundraising Activity by Bureau-Operated School Personnel

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Final rule.

**SUMMARY:** Congress authorized the Director of the Bureau of Indian Education (BIE or Bureau) to enter into agreements with third parties to lease the land or facilities of a Bureau-operated school in exchange for funding that benefits the school. This final rule establishes standards for the appropriate use of lands and facilities under a lease agreement, provisions for establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school, accountability standards to ensure ethical conduct, and provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use. This final rule also establishes standards to implement authority provided by Congress for BIE personnel to fundraise on behalf of Bureau-operated schools.

**DATES:** This rule takes effect on August 2, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Rule
- III. Responses to Comments and Changes From Proposed Rule
- IV. Procedural Requirements
  - A. Regulatory Planning and Review (E.O. 12866)
  - B. Regulatory Flexibility Act
  - C. Small Business Regulatory Enforcement Fairness Act
  - D. Unfunded Mandates Reform Act
  - E. Takings (E.O. 12630)
  - F. Federalism (E.O. 13132)
  - G. Civil Justice Reform (E.O. 12988)
  - H. Consultation With Indian Tribes (E.O. 13175)
  - I. Paperwork Reduction Act
  - J. National Environmental Policy Act
  - K. Effects on the Energy Supply (E.O. 13211)

#### I. Background

Public Law 112–74, as amended by Public Law 113–235 and Public Law 114–113, authorizes the Director of BIE, or the Director’s designee, to enter into agreements with public and private persons and entities allowing them to lease the land or facilities of a Bureau-operated school in exchange for consideration (in the form of funds) that benefits the school. The head of the school determines the manner in which the consideration will be used to benefit the school, as long as the use is for school purposes otherwise authorized by law. Congress provided that any funds obtained under this authority will not affect or diminish appropriations for the operation and maintenance of Bureau-operated schools, and that no funds will be withheld from distribution to the budget of a school due to receipt of such funds.

This public law also allows personnel of Bureau-operated schools to participate in fundraising activity for the benefit of a Bureau-operated school in their official capacity, as part of their official duties.

To carry out these public law provisions, the Act requires the Secretary of the Interior to promulgate regulations. The Act provides that the regulations must include standards for the appropriate use of Bureau-operated school lands and facilities by third parties under a rental or lease agreement; provisions for the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school; accountability standards to ensure ethical conduct; and provisions for monitoring the amount and terms of

consideration received, the manner in which the consideration is used, and any results achieved by such use.

The BIE published a proposed rule on October 14, 2020 (85 FR 65000) and received four comments, which are discussed later in this preamble.

## II. Summary of Rule

This rule establishes a new Code of Federal Regulations (CFR) part to implement the leasing and fundraising authority that Congress granted to BIE under Public Law 112–74, as amended by Public Law 113–235 and Public Law 114–113. The leasing provisions of this rule apply only to the facilities and land of Bureau-operated schools. This rule does not apply to public schools, Public Law 100–297 Tribally controlled grant schools, or Public Law 93–638 contract schools. This rule implements statutory leasing authority specific to leasing of Bureau-operated school facilities and land and is separate from the general statutory authority for leasing. To obtain approval of a lease of a Bureau-operated facility or land, one would need to comply with this new regulation, rather than the more generally applicable regulations at 25 CFR part 162. While the regulations at part 162 allow the granting of permits for use of Government land, the primary purpose of part 162 is to promote leasing of Indian land for housing, economic development, and other purposes. In contrast, the purpose of these new regulations at part 48 is to lease or rent Bureau-operated school facilities in exchange for consideration that will be used for school purposes. We note that nothing in this rule affects 25 CFR 31.2, which allows for use of Bureau-operated school facilities or land for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities. The fundraising provisions of this rule apply only to employees of schools operated by the BIE. Subpart A of the rule sets forth the purpose, definitions, and other general provisions applicable to both leasing and fundraising.

Subpart B establishes the mechanisms and standards by which the Bureau may lease Bureau-operated school facilities and land to third parties. The statutory authority for the rule's leasing sections provides that the BIE Director or the Director's designee is authorized to enter into agreements with public and private persons and entities that provide for such persons and entities to rent or lease the land or facilities of a Bureau-operated school in exchange for a consideration (in the form of funds) that

benefits the school, as determined by the head of the school. Public Law 112–74, section 115(a)(1). The rule allows only the BIE Director or his or her designee to enter into leases, and defines the Director's designee to be the Associate Deputy Director—Bureau-Operated Schools or the Associate Deputy Director—Navajo Schools. While most lease negotiations will occur at the school level, having someone at the Associate Deputy Director level make the ultimate determination whether to enter into a lease provides an appropriate level of oversight. The rule is written to provide a basic framework for leasing of Bureau-operated school facilities without being overly prescriptive so that it can accommodate a wide range of leasing circumstances—everything from leasing out a school gymnasium for a few hours to entering into a commercial lease of Bureau-operated school facility land to a billboard company. Accordingly, the rule sets forth the standards the BIE Director (or designee) will use to determine whether to enter into a lease. A primary standard for determining whether to enter into a lease is that the lease provides a net financial benefit to the school because the statutory authority for this regulation is centered on BIE receiving consideration in the form of funds that benefit the school. The BIE Director (or designee) will also consider including lease terms to incorporate the standards listed in § 48.104. This subpart also establishes what provisions a lease must include, what actions are necessary if permanent improvements are to be constructed under the lease, and how the Bureau will ensure compliance with the lease. In accordance with the limited authority provided by the statute, this subpart provides that the Bureau may only accept funds (as opposed to in-kind consideration) as consideration for a lease and may only use the funds for school purposes. The rule also broadly establishes how the Director or his or her designee will determine what amount is proper for lease consideration. While fair market value is a consideration, a formal appraisal may not be needed in all circumstances (e.g., leasing out the school gym for a few hours) so the rule does not require a formal appraisal. The rule also establishes the mechanics for lessees to pay consideration and describes how the Bureau will process the funds. The rule provides the same late payment fees as are provided in the part 162 provisions for leasing Indian land. For oversight purposes, the rule requires Bureau-operated school personnel to

report annually on any active lease to the Director and others, and include an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

Subpart C of the rule addresses fundraising activities by employees of Bureau-operated schools in their official capacity on behalf of those schools. (Nothing in this rule affects fundraising activities by students). The statutory authority for the rule's fundraising sections allows BIE personnel to participate in a fundraising activity for the benefit of a Bureau-operated school in an official capacity as part of their official duties, and using the employee's official title, position, and authority. This subpart of the rule allows authorized personnel to spend a "reasonable portion" of his or her official duty time fundraising. BIE uses the phrase "reasonable portion" rather than specifying a number of hours or percentage of duty time to provide flexibility for different work schedules and fundraising activities while ensuring that school personnel are still fulfilling their work duties. The Director, Director's designee, or Head of School would determine what constitutes a reasonable portion when they review the proposed fundraising activity under § 48.202 to certify that it complies with regulatory requirements. In accordance with the statute's requirement for the regulations to establish standards to ensure ethical conduct, this subpart limits the types of fundraising an employee may conduct to ensure fundraising maintains the school's integrity, the Bureau's impartiality, and public confidence in the school. Certain approvals are required before personnel may accept a donation on behalf of a school as a mechanism for acceptance of the use of funds and a check to ensure standards are being upheld. In accordance with the statute's requirement that fundraising activity benefit a Bureau-operated school, each Bureau-operated school that receives donations is required to report annually to the Director and others, including an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

## III. Responses to Comments

BIE received four written comment submissions on the proposed rule, some of which contained more than one comment. A summary of each of the issues raised in the comments and BIE's responses follow:

*Comment:* No taxpayer dollars should be used for religious purposes unless the religion is a traditional Native American religion.

*Response:* Funds received under Part 48 are not taxpayer funds. The funds received come from leases and donations and can be used for school purposes as defined in § 48.3, which do not include sectarian purposes. It is the policy for the BIE Director, pursuant to 25 CFR 32.4(f), to promote and respect the right to cultural practices and religious freedom for all students, consistent with Tribal and Alaska Native entities' wishes and with the provisions of the American Indian Religious Freedom Act.

*Comment:* The requirements in Subpart B are vague because they don't list the detailed requirements that each possible lessee must have to obtain a lease.

*Response:* The rule lists the detailed requirements for the lease at § 48.105.

*Comment:* The rule should establish specific guidelines regarding how the funds are to be used to benefit the school or there will be confusion and misuse of funds.

*Response:* The rule defines the "school purposes" for which the funds may be used. See §§ 48.3 (definition of "school purposes"), 48.110 (regarding use of funds received through leasing), and 48.204 (regarding use of funds received through fundraising).

*Comment:* This rule should incorporate other types of schools such as Tribal schools that are underfunded in locations where students may not have the opportunity to attend a Bureau school.

*Response:* The statutory authority for this rule extends only to BIE-operated schools.

*Comment:* We are in favor of this rule because of the magnitude of BIE-operated schools' need for funds and that any funding received through leasing and fundraising will not affect or diminish appropriations. Since the intent of the rule is to increase the amount of funds at BIE-schools' disposal in order to improve educational outcomes for students, it would be regrettable if this rule eventually precipitated the opposite and resulted in a loss of funding for these schools.

*Response:* Congress provided that nothing in the statute authorizing leasing of and fundraising by Bureau-operated schools diminishes or otherwise affects the appropriation of funds to the budget accounts for operation and maintenance of Bureau-operated schools. Congress further provided that no funds may be withheld

from distribution to the budget of any Bureau-operated school due to the school's receipt of funds from leasing or fundraising.

*Comment:* The stipulation that the rule does not affect 25 CFR 31.2, which allows BIE facilities to be used for adult education and community activities without the requirement of consideration, mitigates concerns that the rule may be detrimental to the community, as both adult education activities and communities provide positive outcomes, particularly in communities facing higher poverty rates, such as those in which BIE-operated schools are located.

*Response:* The final rule includes the stipulation that this commenter supports.

*Comment:* The requirement in section 48.205(f) that participation in fundraising must be voluntary is important not just for teachers, but also students, community members and organizations, to ensure they are not punished or retaliated against for not participating in a fundraiser, or for participating in an "unsuccessful" fundraiser.

*Response:* The final rule includes the requirement that this commenter supports.

*Comment:* A major advantage to this rule is that it improves these schools' access to much-needed funds without having to increase government spending or divert government funding from other important purposes. Although BIE schools receive more funding per pupil than the average U.S. public school, the financial need for this rule is still evident due to the unique challenges and higher costs such schools face. The funding schools can obtain from fundraising would help make necessary improvements to the quality of education for all its students; however, the GAO, in its 2014 report, specified concerns regarding BIE schools' ability to manage funds efficiently and ethically and, in 2017, added BIE to its High Risk List for agencies and programs vulnerable to mismanagement. A prudent solution would be to resolve existing issues to prevent poor stewardship of taxpayer dollars. Ideally, BIE would first demonstrate an improved ability to handle its finances before entrusting BIE schools with additional funds.

*Response:* The rule provides that the schools must report on the use of funds received through leasing (see § 48.115) and fundraising (§ 48.208).

*Comment:* The condition at section 48.206 requiring donations equal to or exceeding \$5,000 be approved by the Director's designee could cause school

administrators to discourage donations exceeding this threshold in order to minimize bureaucratic approvals, or misrepresent the true dollar amount of the donation while "pocketing" amounts in excess of the threshold.

*Response:* Criminal statutes prohibit employees from "pocketing" funds.

*Comment:* Listing \$5,000 as a threshold will eventually produce considerably different results over time due to inflation; instead, add a stipulation that the exact dollar amount is to be equivalent of the real value as of 2021. There are free, fast, user-friendly inflation calculators on the internet that would assist in adjusting the value based on inflation in successive years.

*Response:* BIE will reevaluate this monetary threshold after it obtains experience in implementing this regulation.

*Comment:* The rule's requirement at section 48.104 that the Director must determine that any proposed leases must not interfere with school activities or compromise school safety should be supported by a reporting mechanism between the impacted school's faculty, staff, and students and the Director in case an interference occurs during the lease term. Those individuals witness the day-to-day operations of the school and will identify whether a lease results in unanticipated negative effects on schooling. There should be a procedure to allow them to file complaints with the Director so the Director fully understands the effects of the actual implementation of a given lease and can take appropriate actions as needed.

*Response:* The Head of the School, in consultation with the school board or board of regents, certifies that the lease will not interfere with existing or planned school activities prior to the Director entering into the lease. Each individual lease will have provisions specific to the activities that the lessee will conduct under the lease to ensure that lease activities will not interfere with school activities. Failure to comply with lease terms would be addressable under §§ 48.116 and 48.117.

*Comment:* It seems that Native American children with exceptionalities are or may be denied the protections of the Rehabilitation Act of 1973 and other laws that empower them to achieve education-related goals. Many living on reservations are trapped in poverty, inadequate housing, alcoholism, drug abuse, and exceptionally high levels of unemployment, and children living on the reservation have two options: obtain an education to end the vicious cycle or remain trapped. Without the opportunity to obtain an education



because you are, by default, excluded from the classroom because of your exceptionality. It is imperative that children attending public schools on Indian reservations be granted the opportunity to obtain an education, regardless of whether they have an exceptionality.

*Response:* This comment is not directly relevant to this rulemaking, but BIE has considered it in its implementation of Section 504 of the Rehabilitation Act of 1973.

#### IV. Changes to Proposed Rule

The final rule makes three changes to the proposed rule for clarity and to better define BIE officials' roles and responsibilities:

- Revises the definition of "Director's designee" to mean only the Associate Deputy Director (deleting the "Education Program Administrator");
- Adds in § 48.202 that the Head of the School, in addition to the Director or Director's designee, is one of the individuals authorized to approve fundraising in advance; and
- Separates out the discussion of how a Bureau-operated school processes donated funds from § 48.207, regarding how donations may be used, to a new § 48.208.

#### V. Procedural Requirements

##### A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

##### B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not

have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and any economic effects on small entities would be fees charged for the use of the facilities, which must be tied to either fair market value or the costs to the Bureau of the lease and would not have a significant economic effect on the small entities.

##### C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

##### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

##### E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

##### F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

##### G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and

ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

##### H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking. The Department acknowledges that Tribes with children attending Bureau-operated schools have an interest in this rule because it provides for consideration for the leasing of Bureau-operated schools and fundraising standards for employees of Bureau-operated schools. As such, the Department engaged Tribal government representatives by distributing a letter, dated June 19, 2014, with a copy of the draft rule and requesting comment on the draft rule by July 31, 2014. The Department also published a proposed rule on June 21, 2016 (81 FR 40218) and hosted a listening session and two teleconference consultations on the rule, but received no substantive comments. The Department hosted an additional consultation November 13, 2020, but received no substantive comments.

##### I. Paperwork Reduction Act

This rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

*Brief Description of Collection:* The Bureau of Indian Education (BIE) is establishing standards for the appropriate use of lands and facilities by third parties. These standards address the following: The execution of lease agreements; the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a Bureau-operated school; the assurance of ethical conduct; and monitoring the amount and terms of

consideration received, the manner in which the consideration is used, and any results achieved by such use. The paperwork burden associated with the rule results from lease provisions; lease violations; and assignments, subleases, or mortgages of leases.  
*Title:* Use of Bureau-Operated Schools by Third Parties.

*OMB Control Number:* 1076–0187.  
*Form Number:* None.  
*Type of Review:* New collection.  
*Respondents/Affected Public:* Individuals and Private Sector.  
*Total Estimated Number of Annual Respondents:* 17.  
*Total Estimated Number of Annual Responses:* 24.

*Estimated Completion Time per Response:* One to three hours.  
*Total Estimated Number of Annual Burden Hours:* 68 hours.  
*Respondents' Obligation:* Required to obtain a benefit.  
*Frequency of Response:* Annually.  
*Total Estimated Annual Non-Hour Burden Cost:* \$0.

CFR cite	Description	Number respondents	Annual responses	Burden hours per response	Total annual burden hours
48.105 .....	Provisions of leases (businesses) .....	10 .....	10	3	30
48.105 .....	Provisions of leases (individuals) .....	2 .....	2	3	6
48.105 .....	Provisions of leases (governments) .....	5 .....	5	3	15
48.106 .....	Covered improvements under lease (businesses) .....	2 (subset) .....	2	3	6
48.106 .....	Covered improvements under lease (governments) .....	1 (subset) .....	1	3	3
48.117 .....	Violations of leases (businesses) .....	1 (subset) .....	1	1	1
48.117 .....	Violations of leases (individuals) .....	1 (subset) .....	1	1	1
48.119 .....	Assignments, subleases, and mortgages of leases (businesses).	1 (subset) .....	1	3	3
48.119 .....	Assignments, subleases, and mortgages of leases (individuals).	1 (subset) .....	1	3	3
Total .....	.....	17 .....	24	N/A	68

*OMB Control Number:* 1090–0009.  
*Title:* Donor Certification Form (DI–3680).

*Brief Description of Collection:* This information will provide Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form in advance of accepting the proposed donation where the donation is valued at \$25,000 or more. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence. We expect to receive 25 responses to this information collection annually. The burden associated with this information collection is already reflected in the approval of OMB Control Number 1090–0009.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (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) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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. Please provide a copy of your comments to [consultation@bia.gov](mailto:consultation@bia.gov). Please reference OMB Control Number 1076–0187 in the subject line of your comments.”

*J. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the environmental effects of this rule are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process, unless covered by a categorical exclusion. (For further information see 43 CFR

46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**List of Subjects in 25 CFR Part 48**

Educational facilities, Indians-education.

■ For the reasons given in the preamble, the Department of the Interior amends 25 CFR chapter 1, subchapter E, by adding part 48 to read as follows:

**PART 48—LEASES OF LAND OR FACILITIES OF BUREAU-OPERATED SCHOOLS AND FUNDRAISING ACTIVITIES AT BUREAU-OPERATED SCHOOLS**

**Subpart A—General Provisions**

- Sec.
- 48.1 What is the purpose of this part?
  - 48.2 What is the scope of this part?
  - 48.3 What definitions apply to terms in this part?
  - 48.4 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?
  - 48.5 How does the Paperwork Reduction Act affect this part?

**Subpart B—Leasing of Bureau-operated Facilities**

- 48.101 Who may enter into a lease on behalf of a Bureau-operated school?
- 48.102 With whom may the Director enter into a lease?
- 48.103 What facilities may be leased?
- 48.104 What standards will the Director use in determining whether to enter into a lease?
- 48.105 What provisions must a lease contain?
- 48.106 May a lessee construct permanent improvements under a lease?
- 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?
- 48.108 How will the Bureau determine appropriate consideration for a lease?
- 48.109 Who may use the funds?
- 48.110 For what purposes may a Bureau-operated school use the funds?
- 48.111 How does a lessee pay the Bureau-operated school under a lease?
- 48.112 How are lease payments processed?
- 48.113 Will late payment charges or special fees apply to delinquent lease payments?
- 48.114 How long will the funds be available?
- 48.115 How will the Bureau monitor the results achieved by the use of funds received from leases?
- 48.116 Who may investigate compliance with a lease?
- 48.117 What will the Bureau do about a violation of a lease?
- 48.118 What will the Bureau do if a lessee does not cure a lease violation on time?
- 48.119 May a lease be assigned, subleased, or mortgaged?

**Subpart C—Fundraising Activities**

- 48.201 To whom does this subpart apply?
- 48.202 May employees fundraise?
- 48.203 How much time may employees spend fundraising?
- 48.204 For what school purposes may employees fundraise?
- 48.205 What are the limitations on fundraising?
- 48.206 What approvals are necessary to accept a donation?
- 48.207 How may the donations solicited under this subpart be used?
- 48.208 How does a Bureau-operated school process donated funds?
- 48.209 How must the Bureau-operated school report donations?

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2, 9; Pub. L. 112–74; Pub. L. 113–235; Pub. L. 114–113.

**Subpart A—General Provisions****§ 48.1 What is the purpose of this part?**

- (a) The purpose of this part is to set forth processes and procedures to:
- (1) Implement authorization for the Director or his or her designee to lease or rent Bureau-operated school facilities in exchange for consideration in the form of funds;
  - (2) Establish mechanisms and standards for leasing or renting of Bureau-operated facilities, and

management and use of the funds received as consideration;

(3) Describe allowable fundraising activities by the employees of Bureau-operated schools;

(4) Set accountability standards to ensure ethical conduct; and

(5) Establish provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

(b) Nothing in this part affects:

- (1) 25 CFR 31.2, allowing for use of Federal Indian school facilities for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities;

(2) 25 CFR 31.7 and 36.43(g), establishing guidelines for student fundraising; or

(3) The implementing regulations for the Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, at 41 CFR part 114–51 and policies at Departmental Manual part 400, chapter 3; or

(4) The use of Bureau-operated school facilities or lands by other Federal agencies so long as the use is memorialized in a written agreement between the Bureau and the other Federal agency.

**§ 48.2 What is the scope of this part?**

The leasing provisions of this part apply only to facilities of schools operated by the Bureau and the fundraising provisions of this part apply only to employees of schools operated by the Bureau. This part does not apply to public schools, Public Law 100–297 Tribally controlled schools, or Public Law 93–638 contract or grant schools.

**§ 48.3 What definitions apply to terms in this part?**

*Assistant Secretary* means the Assistant Secretary—Indian Affairs or his or her designee.

*Bureau* means the Bureau of Indian Education.

*Bureau-operated school* means a day or boarding school, a dormitory for students attending a school other than a Bureau school, or an institution of higher learning and associated facilities operated by the Bureau. This term does not include public schools, Public Law 100–297 Tribally controlled schools, or Public Law 93–638 contract or grant schools.

*Construction* means construction of new facilities, modification, or alteration of existing grounds or building structures.

*Days* means calendar days unless otherwise specified.

*Director* means the Director, Bureau of Indian Education.

*Director's designee or designee* means the Associate Deputy Director—Navajo Schools or Associate Deputy Director—Bureau-Operated Schools.

*Department* means the Department of the Interior.

*Donation* means something of value (e.g., funds, land, personal property) received from a non-Federal source without consideration or an exchange of value.

*Employee* means an employee of the Bureau working at a Bureau-operated school.

*Facilities* means land or facilities authorized for use by a Bureau-operated school.

*Funds* means money.

*Fundraising* means requesting donations, selling items, or providing a service, activity, or event to raise funds, except that writing a grant proposal to secure resources to support school purposes is not fundraising. Fundraising does not include requests for donated supplies, materials, in-kind services, or funds (e.g., fees for school activities) that schools traditionally require or request parents and guardians of students to provide.

*Head of the School* means the Principal, President, School Supervisor, Residential Life Director, Superintendent of the School, or equivalent head of a Bureau-operated school.

*Lease* means a written contract or rental agreement executed in accordance with this part, granting the possession and use of facilities at a Bureau-operated school to a private or public person or entity in return for funds.

*Private person or entity* means an individual who is not acting on behalf of a public person or entity and includes, but is not limited to, private companies, nonprofit organizations and any other entity not included in the definition of public person or entity.

*Public person or entity* means a State, local, Federal, or Tribal governmental agency or unit thereof.

*School purposes* means lawful activities and purchases for the benefit of students and school operations including, but not limited to: Academic, residential, and extra-curricular programs during or outside of the normal school day and year; books, supplies or equipment for school use; building construction, maintenance and/or operations; landscape construction, modifications, or maintenance on the school grounds.

**§ 48.4 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?**

The Bureau will use applicable Federal financial accounting rules in monitoring the receipt, holding, and use of funds.

**§ 48.5 How does the Paperwork Reduction Act affect this part?**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–NEW and OMB Control Number 1090–0009. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

**Subpart B—Leasing of Bureau-operated Facilities**

**§ 48.101 Who may enter into a lease on behalf of a Bureau-operated school?**

Only the Director or the Director's designee may enter into leases.

**§ 48.102 With whom may the Director enter into a lease?**

The Director or designee may lease to public or private persons or entities who meet the requirements of this part that are applicable to leasing activities.

**§ 48.103 What facilities may be leased?**

Any portion of a Bureau-operated school facility may be leased as long as the lease does not interfere with the normal operations of the Bureau-operated school, student body, or staff, and otherwise meets applicable requirements of this part.

**§ 48.104 What standards will the Director use in determining whether to enter into a lease?**

(a) The Director or designee will make the final decision regarding approval of a proposed lease. The Director or designee must ensure that the lease provides appropriate consideration that benefits the school and that the Head of the School where facilities are being leased has certified, after consultation with the school board or board of regents, that the lease meets the standards in paragraph (b) of this section.

(b) The lease must:

- (1) Comply with the mission of the school;
- (2) Conform to principles of good order and discipline;
- (3) Not interfere with existing or planned school activities or programs;

(4) Not interfere with school board staff and/or community access to the school;

(5) Not allow contact or access to students inconsistent with applicable law;

(6) Not result in any Bureau commitments after the lease expires; and

(7) Not compromise the safety and security of students and staff or damage facilities.

(c) The Director's or designee's decision on a proposed lease is discretionary and is not subject to review or appeal under part 2 of this chapter or otherwise.

**§ 48.105 What provisions must a lease contain?**

(a) All leases of Bureau-operated school facilities must identify at a minimum:

(1) The facility, or portion thereof, being leased;

(2) The purpose of the lease and authorized uses of the leased facility;

(3) The parties to the lease;

(4) The term of the lease, and any renewal term, if applicable;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, and meeting due diligence requirements under § 48.106;

(6) Payment requirements and late payment charges, including interest;

(7) That lessee will maintain insurance sufficient to cover negligence or intentional misconduct occurring on the leasehold; and

(8) Any bonding requirements, as required in the discretion of the Director. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) All leases of Bureau-operated facilities must include, at a minimum, the following provisions:

(1) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(2) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

(3) The Bureau has the right, at any reasonable time during the term of the lease and upon reasonable notice to enter the leased premises for inspection and to ensure compliance; and

(4) The Bureau may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to

make appropriate records, reports, or information available for inspection and duplication.

(c) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States harmless from any loss, liability, or damages resulting from the lessee's, its invitees', and licensees' use or occupation of the leased facility; and

(2) The lessee indemnifies the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault with the exception that the lessee is not required to indemnify the United States for liability or cost arising from the United States' negligence or willful misconduct

**§ 48.106 May a lessee construct permanent improvements under a lease?**

(a) The lessee may construct permanent improvements under a lease of a Bureau-operated facility only if the lease contains the following provisions:

(1) A description of the type and location of any permanent improvements to be constructed by the lessee and a general schedule for construction of the permanent improvements, including dates for commencement and completion of construction;

(2) Specification of who owns the permanent improvements the lessee constructs during the lease term and specifies whether each specific permanent improvement the lessee constructs will:

(i) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Director, and become the property of the Bureau-operated school;

(ii) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(iii) Be disposed of by other specified means.

(3) Due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties.

(i) If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Director with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(ii) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.

(b) The lessee must prepare the required information and analyses, including information to facilitate the Bureau's analysis under applicable environmental and cultural resource requirements.

(c) The Bureau may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense before or after expiration, termination, or cancellation of the lease. The Bureau may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

**§ 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?**

A Bureau-operated school may accept only funds as consideration for a lease.

**§ 48.108 How will the Bureau determine appropriate consideration for a lease?**

The Bureau will determine what consideration is appropriate for a lease by considering, at a minimum, the following factors:

- (a) Fair market value and the indirect and direct costs of the lease; and
- (b) Whether there will be a net financial benefit to the school.

**§ 48.109 Who may use the funds?**

The Bureau-operated school may use funds, including late payment charges, received as compensation for leasing that school's facilities.

**§ 48.110 For what purposes may a Bureau-operated school use the funds?**

The Bureau-operated school must use the funds for school purposes.

**§ 48.111 How does a lessee pay the Bureau-operated school under a lease?**

A lessee must pay consideration and any late payment charges due under the lease to the Bureau by certified check,

money order, or electronic funds transfer made out to the Bureau and containing identifying information as provided for in the lease.

**§ 48.112 How are lease payments processed?**

The Bureau will deposit all funds received as lease consideration or late payment charge into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

**§ 48.113 Will late payment charges or special fees apply to delinquent lease payments?**

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Bureau may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid under the terms of the lease:

TABLE 1 TO PARAGRAPH (b)

The lessee will pay . . .	For . . .
(1) \$50.00 .....	Any dishonored check.
(2) \$15.00 .....	Processing of each notice or demand letter.
(3) 18 percent of balance due .....	Treasury processing following referral for collection of delinquent debt.

**§ 48.114 How long will the funds be available?**

Funds generated under these regulations remain available to the recipient school until expended, notwithstanding 31 U.S.C. 3302, in accordance with the Bureau-operated school's plan for expending the funds for school purposes.

**§ 48.115 How will the Bureau monitor the results achieved by the use of funds received from leases?**

The Head of the School for each Bureau-operated school that has active leases under this part must submit an annual report to the Director, the designee, and the Office of Facilities Management and Construction. The report must contain the following information:

- (a) A list of leases and the facilities covered by each lease;
- (b) An accounting of receipts from each lease;
- (c) An accounting of all expenditures and the supporting documentation

showing that expenditures were made for school purposes;

(d) A report of the benefits provided by the leasing program as a whole;

(e) A certification that the terms of each lease were met or, if the terms of a lease were not met, the actions taken as a result of the noncompliance; and

(f) Any unexpected expenses incurred.

**§ 48.116 Who may investigate compliance with a lease?**

The Head of the School or his or her designee or any Bureau employee may enter the leased facility at any reasonable time, upon reasonable notice, and consistent with any notice requirements under the lease to determine if the lessee is in compliance with the requirements of the lease.

**§ 48.117 What will the Bureau do about a violation of a lease?**

(a) If the Bureau determines there has been a violation of the conditions of a lease, it will promptly send the lessee and any surety and mortgagee a notice

of violation, by certified mail, return receipt requested.

(1) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify the Bureau in writing that the violation has been cured;

(ii) Dispute the determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(2) The notice of violation may order the lessee to cease operations under the lease.

(b) A lessee's failure to pay compensation in the time and manner required by the lease is a violation of the lease, and the Bureau will issue a notice of violation in accordance with this section requiring the lessee to provide adequate proof of payment.

(c) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

**§ 48.118 What will the Bureau do if a lessee does not cure a lease violation on time?**

(a) If the lessee does not cure a violation of a lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Bureau will take one or more of the following actions:

- (1) Cancel the lease;
  - (2) Invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or
  - (3) Grant the lessee additional time in which to cure the violation.
- (b) The Bureau may take action to recover unpaid compensation and any associated late payment charges under § 48.113, and does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation. The Bureau may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Bureau decides to cancel the lease, it will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of its decision. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;
- (3) Notify the lessee of the lessee's right to appeal to the Director if the decision is made by the Director's designee, or to the Interior Board of Indian Appeals if the decision is made by the Director, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;
- (4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
- (5) Order the lessee to take any other action the Bureau deems necessary to protect the facility.

(d) The Bureau may invoke any other remedies available under the lease, including collecting on any available performance bond.

**§ 48.119 May a lease be assigned, subleased, or mortgaged?**

A lessee may assign, sublease, or mortgage a lease only with the approval of the Director.

**Subpart C—Fundraising Activities****§ 48.201 To whom does this subpart apply?**

This subpart applies to employees that fundraise for a Bureau-operated school. This subpart does not apply to students who fundraise.

**§ 48.202 May employees fundraise?**

(a) Employees may fundraise for school purposes as part of their official duties using their official title, position and authority, so long as:

- (1) The Director or the Director's designee or the Head of the School approves the fundraising in advance and certifies that it complies with this subpart; and
- (2) The employees ensure the fundraising conforms to the requirements of this subpart.

(b) Nothing in this part allows participation in political or other activities prohibited by law.

**§ 48.203 How much time may employees spend fundraising?**

Each authorized employee may spend no more than a reasonable portion of his or her official duty time as an employee in any calendar year fundraising.

**§ 48.204 For what school purposes may employees fundraise?**

Employees may fundraise for school purposes as defined in § 48.3.

**§ 48.205 What are the limitations on fundraising?**

- (a) Fundraising may not include any gaming or gambling activity.
- (b) Fundraising may not violate, or create an appearance of violating, any applicable ethics statutes or regulations.
- (c) Donations from fundraising must maintain the integrity of the Bureau-operated school programs and operations, including but not limited to the following considerations:

- (1) The donation may not, and may not appear, to be an attempt to influence the exercise of any regulatory or other authority of the Bureau;
- (2) The donation may not require commitment of current or future funding that is not planned or available;
- (3) The donation must be consistent with, and may not otherwise circumvent, law, regulation, or policy;
- (4) The Bureau-operated school must be able to properly utilize or manage any donated real or personal property within policy, programmatic, and management goals;

(5) Any conditions on the donation must be consistent with authorized school purposes and any relevant policy or planning documents;

(6) The donation may not be used by the donor to state or imply endorsement

by the Bureau or Bureau-operated school of the donor or the donor's products or services;

(7) The donation, if it consists of personnel or funding to hire personnel, must be structured such that the donated or funded personnel do not inappropriately influence any Bureau regulatory action or other significant decision.

(d) The fundraising and donation must maintain the impartiality, and appearance of impartiality, of the Bureau, Bureau-operated school, and its employees, including but not limited to the following considerations:

- (1) The proposed donation may be only in an amount that would not influence or appear to influence any pending Bureau decision or action involving the donor's interests;
- (2) There may be no actual or implied commitment to take an action favorable to the donor in exchange for the donation;

(3) The donor may not obtain or appear to obtain special treatment dealing with the Bureau or Bureau-operated school.

(e) The fundraising and donation must maintain public confidence in the Bureau and Bureau-operated school, its programs, and its personnel, including but not limited to the following considerations:

- (1) The fundraising and acceptance of the donation would not likely result in public controversy;
- (2) Any conditions on donations must be consistent with the Bureau and Bureau-operated school's policy, goals, and programs; and

(3) The fundraising and donation may not involve any inappropriate goods or services.

(f) Participation in fundraising is voluntary. No student, community member, or organization shall be forced, coerced or otherwise unduly pressured to participate in fundraising. No criticism nor any retaliatory action may be taken against, any student, community member, or organization for failure to participate or succeed in fundraising.

**§ 48.206 What approvals are necessary to accept a donation under this subpart?**

Prior to accepting a donation valued at \$5,000 or more under this subpart, the Director's designee must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.205, Departmental policy, and any applicable statute or regulation.

**§ 48.207 How may donations solicited under this subpart be used?**

(a) The Bureau-operated school must first use the funds to pay documented costs of the fundraising activity and must use the remaining funds in accordance with paragraph (b) of this section.

(b) Funds and in-kind donations solicited under this subpart may be used for the school purposes identified in the solicitation. If the solicitation did not identify the school purposes, the funds and in-kind donations may be used for any school purposes defined in § 48.3 of this part.

**§ 48.208 How does a Bureau-operated school process donated funds?**

The Bureau will deposit all funds received as donations into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

**§ 48.209 How must the Bureau-operated school report donations?**

Each Bureau-operated school that has received donations must submit an annual report to the Director containing the following information:

- (a) A list of donors, donation amounts, and estimated values of donated goods and services;
- (b) An accounting of all costs of fundraising activities;
- (c) Supporting documentation showing the donations were used for school purposes; and
- (d) A report of the results achieved by use of donations.

**Bryan Newland,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2021–13196 Filed 6–30–21; 8:45 am]

**BILLING CODE 4337–15–P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[Docket No. TTB–2020–0011; T.D. TTB–170; Ref: Notice No. 196]

RIN 1513–AC63

**Establishment of the Goose Gap Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the

approximately 8,129-acre “Goose Gap” viticultural area in Benton County, Washington. The viticultural area is located entirely within the existing Yakima Valley and Columbia Valley viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective August 2, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:****Background on Viticultural Areas***TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as

established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine’s geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**Goose Gap Petition**

TTB received a petition from Alan Busacca, on behalf of the Goose Gap Wine Grower’s Association, proposing to establish the “Goose Gap” AVA. The proposed AVA is located in Benton County, Washington, and lies entirely within the established Yakima Valley (27 CFR 9.69) and Columbia Valley (27

CFR 9.74) AVAs and does not overlap any other existing or proposed AVA. Within the approximately 8,129-acre proposed AVA, there are 2 commercial vineyards which cover a total of more than 1,800 acres, as well as 1 winery. The distinguishing features of the proposed Goose Gap AVA are its geology and soils.

According to the petition, the proposed AVA is part of a series of folded hills and valleys collectively known as the Yakima Fold Belt, which runs from the Beezely Hills in the north to the Horse Heaven Hills in the south. The proposed Goose Gap AVA is comprised of two geographic features with similar viticultural conditions: Goose Gap and the adjoining Goose Hill. Goose Gap and Goose Hill together form part of a single folded and faulted block of the Columbia River Basalt. Goose Gap is formed from a syncline, a down-folded arch in the bedrock that creates a saddle-like shape, whereas Goose Hill is formed from an anticline, an arch-like structure of basalt that bends upwards to form a ridge and slopes. Goose Gap and Goose Hill both have an east-west orientation, south and southwest slopes that are too steep for planting, and plantable north and northeast slopes. By contrast, the petition states that all of the ridges and hills in the region surrounding the proposed AVA have a northwest-southeast orientation, plantable south and southwest slopes, and north and northeast slopes that are too steep for vineyards. Because vineyards in the proposed Goose Gap AVA are planted on north- and northeast-facing slopes, they receive less solar radiation than nearby vineyards planted on south- and southwest-facing slopes. As a result, grapes grown in the proposed AVA typically ripen later than the same varieties grown in the neighboring Red Mountain AVA (27 CFR 9.167), which is to the northwest of the proposed AVA.

Five main soil series comprise almost 95 percent of the soils in the proposed Goose Gap AVA: Warden, Shano, Kiona, Hezel, and Prosser. The Warden series soils, which make up 65 percent of the proposed AVA, consist of wind-blown loess over layered or stratified silts and fine sands, and have rooting depths of six feet or more with no hardpans or other root-restrictive layers. Shano soils constitute seven percent of the proposed AVA and are also formed from wind-blown loess and are deep soils with low levels of organic material. Kiona soils comprise 9 percent of the proposed AVA and are formed in loess and rubble from fractured basalt. Hezel soils make up seven percent of the proposed AVA and are made of windblown sand over

stratified silts and sands. Finally, Prosser soils comprise five percent of the proposed AVA and derive from loess mixed with flood sediments. Prosser soils are generally shallow and overlay fractured basalt bedrock. In comparison, Warden soils are less common in the established Red Mountain AVA to the northwest of the proposed AVA, the Horse Heaven Hills AVA (27 CFR 9.188) to the southwest of the proposed AVA, and in the established Yakima Valley AVA that encompasses the proposed AVA. Additionally, Scooteny soils comprise almost 11 percent of soils in the established Red Mountain AVA, and Ritzville soils comprise almost 30 percent of the soils in the established Horse Heaven Hills AVA, yet both soil series are completely absent from the proposed Goose Gap AVA.

#### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 196 in the **Federal Register** on October 23, 2020 (85 FR 67469), proposing to establish the Goose Gap AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 196.

In Notice No. 196, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the Columbia Valley and Yakima Valley AVAs, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVAs. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the Columbia Valley and Yakima Valley AVAs that the proposed Goose Gap AVA should no longer be part of these established AVAs. The comment period closed December 22, 2020.

In response to Notice No. 196, TTB received one comment. The comment, from a local vineyard owner, supported the proposed Goose Gap AVA. TTB did not receive any comments regarding the location of the proposed AVA within

the established Columbia Valley and Yakima Valley AVAs.

#### **TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 196, TTB finds that the evidence provided by the petitioner supports the establishment of the Goose Gap AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Goose Gap" AVA in Benton County, Washington, effective 30 days from the publication date of this document.

TTB has also determined that the Goose Gap AVA will remain part of the established Columbia Valley AVA. As discussed in Notice No. 196, the Goose Gap AVA shares some broad characteristics with the established AVA. For example, elevations within the Goose Gap AVA and the Columbia Valley AVA are generally below 2,000 feet. However, the Goose Gap AVA does have some features that differentiate it from the Columbia Valley AVA. For instance, the Goose Gap AVA encompasses a single folded and faulted block of Columbia River basalt, characterized by the Goose Gap syncline and the adjoining Goose Hill anticline. The Columbia Valley AVA, by contrast, consists of multiple ridges, hills, and valleys within a single broad basin.

Finally, TTB has also determined that the Goose Gap AVA will remain part of the established Yakima Valley AVA. The two AVAs share soils that are a combination of glacial-flood and windborne soils, including the Warden soil series, and rest on Columbia River basalt. However, the Goose Gap AVA is unique among the hills of the Yakima Valley AVA in that it has an east-west alignment and plantable north and northeast slopes. Additionally, a major soil series of the Yakima Valley AVA is the Scooteny–Starbuck soil association. However, within the Goose Gap AVA, Scooteny soils are absent, and Starbuck soils comprise less than 2 percent of the soils.

#### **Boundary Description**

See the narrative description of the boundary of the Goose Gap AVA in the regulatory text published at the end of this final rule.

#### **Maps**

The petitioners provided the required maps, and they are listed below in the regulatory text. The Goose Gap AVA boundary may also be viewed on the AVA Map Explorer on the TTB website,



at <https://www.ttb.gov/wine/ava-map-explorer>.

### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Goose Gap AVA, its name, "Goose Gap," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name "Goose Gap" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Goose Gap AVA will not affect the existing Columbia Valley or Yakima Valley AVAs, and any bottlers using "Columbia Valley" or "Yakima Valley" as an appellation of origin or in a brand name for wines made from grapes grown within the Columbia Valley or Yakima Valley AVAs will not be affected by the establishment of this new AVA. The establishment of the Goose Gap AVA will allow vintners to use "Goose Gap", "Yakima Valley," and "Columbia Valley" as appellations of origin for wines made primarily from grapes grown within the Goose Gap AVA if the wines meet the eligibility requirements for the appellation.

### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other

administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

### Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### List of Subjects in 27 CFR Part 9

Wine.

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### PART 9—AMERICAN VITICULTURAL AREAS

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

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas AREAS

- 2. Subpart C is amended by adding § 9.277 to read as follows:

#### § 9.277 Goose Gap.

(a) *Name.* The name of the viticultural area described in this section is "Goose Gap". For purposes of part 4 of this chapter, "Goose Gap" is a term of viticultural significance.

(b) *Approved maps.* The 4 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Goose Gap viticultural area are titled:

- (1) Benton City, WA, 2017;
- (2) Richland, WA, 2017;
- (3) Badger Mountain, WA, 2017; and
- (4) Webber Canyon, WA, 2017.

(c) *Boundary.* The Goose Gap viticultural area is located in Benton County, Washington. The boundary of the Goose Gap viticultural area is as described in paragraphs (c)(1) through (12) of this section:

(1) The beginning point is on the Benton City map at the intersection of Sections 10, 11, 15, and 14, T9N/R27E. From the beginning point, proceed southwesterly in a straight line for approximately 250 feet to the 700-foot elevation contour in Section 15, T9N/R27E; then

(2) Proceed southwesterly along the 700-foot elevation contour to its westernmost point in Section 15, T9N/R27E; then

(3) Proceed southwesterly in a straight line to intersection of the 700-foot elevation contour and an unnamed intermittent stream in Section 16, T9N/R27E; then

(4) Proceed southwesterly along the unnamed intermittent stream to its intersection with the 600-foot elevation contour in Section 20, T9N/R27E; then

(5) Proceed south, then southwesterly along the 600-foot elevation contour, crossing onto the Webber Canyon map, for a total of approximately 3 miles to the intersection of the 600-foot elevation contour and the western boundary of Section 27, T9N/R27E; then

(6) Proceed south along the western boundary of Section 27 to its intersection with the railroad tracks; then

(7) Proceed southeasterly along the railroad tracks, crossing onto the Badger Mountain map, and continuing along the railroad tracks for a total of approximately 3 miles to the intersection of the railroad tracks with Dallas Road in Section 36, T9N/R27E; then

(8) Proceed east, then north along Dallas Road for approximately 2 miles to its intersection with Interstate 182 in Section 20, T9N/R28E; then

(9) Proceed west along Interstate 182 and onto the ramp to Interstate 82, and continue northwesterly along Interstate 82, crossing over the southwestern corner of the Richland map and onto the Benton City map, to the intersection of Interstate 82 and an intermittent stream in Section 13, T9N/R27E; then

(10) Proceed northwesterly along the intermittent stream to its intersection with E. Kennedy Road NE in Section 13, T9N/R27E; then

(11) Proceed north in a straight line to the northern boundary of Section 13, T9N/R27E; then

(12) Proceed westerly along the northern boundaries of Sections 13 and 14, returning to the beginning point.

Signed: June 21, 2021.

**Mary G. Ryan,**  
Administrator.

Approved: June 21, 2021.

**Timothy E. Skud,**  
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2021-14047 Filed 6-30-21; 8:45 am]

BILLING CODE 4810-31-P

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[Docket No. TTB–2020–0014; T.D. TTB–171; Ref: Notice No. 199]

RIN 1513–AC65

**Establishment of the Ulupalakua Viticultural Area****AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 70-acre “Ulupalakua” viticultural area (AVA) on the island of Maui, Hawaii. The Ulupalakua viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective August 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:****Background on Viticultural Areas***TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine’s geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**Ulupalakua AVA Petition**

TTB received a petition from Mark Beaman, winemaker at Maui Wines, proposing the establishment of the “Ulupalakua” AVA. The proposed AVA is located within the privately-owned, 18,000-acre Ulupalakua Ranch on the island of Maui, Hawaii. The proposed AVA contains approximately 70 acres, with approximately 16 acres of vineyards. Although there is no winery within the boundary of the proposed AVA, grapes from the proposed AVA are made into wine at the Maui Wines facility, which is a short distance south of the proposed AVA. According to the petition, the distinguishing features of the proposed Ulupalakua AVA include its topography, soils, and climate.

The proposed Ulupalakua AVA contains a series of four distinct benches that are oriented to the southwest. The benches are gently sloped, with slope angles between 0 and 5 percent, and are separated by steeper erosional ravines. The petition states that the gentle slopes of the benches minimize the risk of erosion, facilitate safe agriculture, and allow vineyards planted on the benches to receive uniform amounts of sunlight, rainfall, and temperature-moderating cloud cover. By contrast, the surrounding regions all contain steeper slopes. The petition notes that the regions to the north, west, and east of the proposed AVA have average slope angles of 15 to 17 percent. The petition also notes that the regions to the north and west of the proposed AVA contain more erosional features, such as ravines, which are less suitable for viticulture than gently sloping benches. Furthermore, the region to the south of the proposed AVA contains rugged, exposed volcanic rocks that are not suitable for viticulture.

The soils of the proposed Ulupalakua AVA formed from the erosion of ancient alkali lava flows from Mt. Haleakala. Kula loam makes up 80 percent of the soil of the proposed AVA and is derived from weathered basic igneous rocks. The remaining 20 percent of the soils of the proposed AVA are comprised of the lo series, which are silt loams that gradually acquire more clay deeper in the soils. According to the petition, the soils of the proposed AVA are fertile enough to produce healthy vines and fruit without promoting excessive vine and leaf growth. Additionally, the uniformity of the soils within the proposed AVA results in a greater consistency in growing conditions for vineyards than can be found in the

surrounding regions. To the south of the proposed AVA, the soil changes to Kula very rocky loam, which consists of very large volcanic rocks and boulders which would not be suitable for vineyards. The same Kula soil found within the proposed AVA is also found to the west, but the petition notes that the topsoil west of the proposed AVA has been scoured by erosion and would be thinner and not as suitable for viticulture. The petition did not provide information on the soils to the north and east of the proposed AVA.

Within the proposed Ulupalakua AVA, annual temperatures are moderate and do not drop below 50 degrees Fahrenheit (F), which is generally considered to be the minimum temperature required for grape vine growth and fruit development. The difference between the average high and low temperatures each month in the proposed AVA is typically 20 degrees or less. The proposed AVA receives an average of 30.7 inches of rainfall a year and less than 2 inches per month in the harvest months of July and August. According to the petition, the low rainfall amounts during harvest reduce the risk of mildew and rot, while the mild temperatures protect ripening fruit against sunburn and heat stress.

The petition states that the proposed AVA's climate is influenced by its proximity to Mt. Haleakala. To the north of the proposed Ulupalakua AVA, on the higher slopes of the mountain, annual temperatures are cooler and temperatures drop below 50 degrees F. Because moist air moves from east to west over the mountain, regions to the east of the proposed AVA typically receive higher average annual rainfall amounts, while elevations to the west of the proposed AVA have less rainfall. The petition did not include temperature data for locations to the east, west, or south of the proposed AVA, nor did it include precipitation data for regions to the north and south of the proposed AVA.

#### Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 199 in the **Federal Register** on November 10, 2020 (85 FR 71726), proposing to establish the Ulupalakua AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed

comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 199. In Notice No. 199, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on January 11, 2021.

In response to Notice No. 199, TTB received one comment. However, the comment did not contain information related to the proposed AVA or to the AVA program in general, and was not posted to the public docket.

#### TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Ulupalakua AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Ulupalakua" AVA in Hawaii, effective 30 days from the publication date of this document.

#### Boundary Description

See the narrative description of the boundary of the Ulupalakua AVA in the regulatory text published at the end of this final rule.

#### Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The Ulupalakua AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

#### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a

label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Ulupalakua AVA, its name, "Ulupalakua," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name "Ulupalakua" in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Ulupalakua AVA will not affect any existing AVA. The establishment of the Ulupalakua AVA will allow vintners to use "Ulupalakua" as an appellation of origin for wines made primarily from grapes grown within the Ulupalakua AVA if the wines meet the eligibility requirements for the appellation.

#### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

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

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.278 to read as follows:

#### § 9.278 Ulupalakua AVA.

(a) *Name.* The name of the viticultural area described in this section is “Ulupalakua”. For purposes of part 4 of this chapter, “Ulupalakua” is a term of viticultural significance.

(b) *Approved maps.* The United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Ulupalakua viticultural area is titled “Makena, Hawaii, 1983.”

(c) *Boundary.* The Ulupalakua viticultural area is located on the island of Maui, in Hawaii. The boundary of the Ulupalakua viticultural area is as described in paragraphs (c)(1) through (6) of this section:

(1) The beginning point is on the Makena, Hawaii, map at the intersection of an unnamed, light-duty road known locally as State Highway 37 and the northernmost unnamed, unimproved road in the Palauea land division (a land division is known as an “ahupua’a” in Hawaii). From the beginning point, proceed south along State Highway 37 to the next unnamed, unimproved road in the Palauea land division; then

(2) Proceed west in a straight line for approximately 2,700 feet to the 1,560-foot elevation contour; then

(3) Proceed north along the 1,560-foot elevation contour to the northern boundary of the Palauea land division; then

(4) Proceed east along the northern boundary of the Palauea land division to the 1,800-foot elevation contour; then

(5) Proceed south along the 1,800-foot elevation contour for approximately 400 feet to the point where the 1,800-foot elevation contour intersects with an imaginary line drawn from the terminus of the northernmost unnamed, unimproved road in the Palauea land division; then

(6) Proceed east in a straight line for approximately 800 feet, returning to the beginning point.

Signed: June 21, 2021.

**Mary G. Ryan,**  
Administrator.

Approved: June 21, 2021.

**Timothy E. Skud,**  
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2021-14058 Filed 6-30-21; 8:45 am]

BILLING CODE 4810-31-P

### DEPARTMENT OF THE TREASURY

#### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 70

[Docket No. TTB-2021-0004; T.D. TTB-169]

RIN 1513-AC56

#### Removal of Obsolete Regulation Regarding Rewards for Information Relating to Violations of Tax Laws Administered by the Alcohol and Tobacco Tax and Trade Bureau

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** In this final rule, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is removing obsolete regulatory provisions related to whistleblower rewards. Under the Internal Revenue Code, individuals who provide information to the Treasury Department regarding underpayment of taxes or violations of internal revenue laws may file claims for monetary “whistleblower” awards. Recent changes to the Code have made the TTB regulation regarding whistleblower rewards obsolete, and, therefore, TTB is removing that provision from its regulations. TTB has signed a memorandum of understanding with the Internal Revenue Service, under which the Internal Revenue Service will process whistleblower award claims for information regarding underpayment of taxes collected by TTB or violations of the internal revenue laws administered by TTB.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202-453-1039, ext. 135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the following provisions of the Internal Revenue Code of 1986, as amended (IRC, 26 U.S.C.): Chapter 51 (imposing Federal excise tax on distilled spirits, wine, and beer), chapter 52 (imposing Federal excise tax on tobacco products and cigarette papers and tubes), and sections 4181-4182 (imposing Federal excise tax on firearms and ammunition). TTB administers these provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as

codified at 6 U.S.C. 531(d). The Secretary of the Treasury (the Secretary) has delegated related IRC administrative and enforcement authorities to TTB through Treasury Order 120-01. The Secretary also has delegated administration and enforcement of other internal revenue laws to the Internal Revenue Service under Treasury Order 150-10.

Under section 7623 of the IRC (26 U.S.C. 7623), individuals who provide information to the Department of the Treasury that is used to detect underpayments of Federal taxes or violations of internal revenue laws may be eligible for monetary “whistleblower” awards under regulations issued by the Secretary.

TTB had previously issued a whistleblower reward regulation at 27 CFR 70.41. However, amendments to the Internal Revenue Code have made this regulation obsolete. See the amendments made to 26 U.S.C. 7623 by section 406 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432), section 41108 of the Balanced Budget Act of 2018 (Pub. L. 115-123), and section 1405 of the Taxpayer First Act (Pub. L. 116-25). As a result of these statutory amendments, described more fully below, § 70.41 has become obsolete, and TTB is removing that section from its regulations in 27 CFR part 70, Procedure and Administration.

Section 406 of the Tax Relief and Health Care Act of 2006 significantly revised 26 U.S.C. 7623 and required the Treasury Department to establish a “Whistleblower Office” within the Internal Revenue Service (IRS) to analyze information received by whistleblower claimants and determine the amount of any award under 26 U.S.C. 7623(b). The IRS Whistleblower Office processes claims pertaining to underpayments of tax that are owed to the IRS or violations of internal revenue laws administered by the IRS that may be eligible for an award under 26 U.S.C. 7623(a) and (b). See IRS Delegation Order 25-07 (delegation to the Whistleblower Office of the authority to approve IRS discretionary awards under section 7623(a)). Section 41108 of the Balanced Budget Act of 2018 then clarified the definition of “collected proceeds” from which the Treasury Department may make awards to whistleblowers. The Taxpayer First Act further amended 26 U.S.C. 7623 by establishing a notification process for whistleblowers and adding protections for whistleblowers against retaliation.

To modernize the process for accepting, processing, and rewarding whistleblowers and to give effect to the statutory changes, TTB has entered into

a memorandum of understanding (MOU) with the IRS Whistleblower Office. As set forth in that MOU, the IRS Whistleblower Office will accept claims from whistleblowers via IRS Form 211, Application for Award for Original Information, and refer such information to TTB when applicable. TTB will determine if the information is actionable after any investigation undertaken, collect proceeds, and provide information, including an evaluation of the whistleblower's contributions, to the IRS Whistleblower Office. The IRS Whistleblower Office will process all TTB-related whistleblower award claims filed under 26 U.S.C. 7623 under the IRS regulations and procedures. Under the MOU, the IRS will consider references to the "Internal Revenue Service" or "IRS" in the relevant IRS regulations and procedures to include TTB personnel and TTB actions when appropriate.

Updated information on the whistleblower program, including how and where to file such claims with the IRS Whistleblower Office is available on the TTB website at [www.ttb.gov](http://www.ttb.gov).

### Regulatory Analysis and Notices

#### *Executive Order 12866*

It has been determined that this notice is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore, a regulatory assessment is not necessary.

#### *Inapplicability of Prior Notice and Public Comment Procedures and Delayed Effective Date*

TTB is issuing this final rule without prior notice and opportunity for public comment pursuant to authority under section 4(a) of the Administrative Procedure Act, as amended (APA) (5 U.S.C. 553(b)(B)). That provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In this final rule, TTB is removing a regulatory provision that has become obsolete due to statutory changes, so TTB finds that prior notice is unnecessary. TTB also finds that it is unnecessary to provide a delayed effective date for revoking its obsolete regulation under section 4(c) of the APA (5 U.S.C. 553(d)); this rule is therefore effective immediately.

#### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*) do not apply. Pursuant to 26 U.S.C. 7805(f), TTB submitted this final rule to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of the regulations on small businesses. TTB received no comments from SBA in response to this final rule.

#### *Paperwork Reduction Act*

This final rule imposes no new collection of information. The IRS will account for any burden associated with additional respondents to its information collection, IRS Form 211, Application for Reward for Original Information (20,000 annual respondents and 15,000 burden hours), which has been previously reviewed and approved by OMB and assigned control number 1545-0409.

#### Drafting Information

Michael Hoover of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and Tobacco Tax and Trade Bureau personnel.

#### List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

#### Amendments to the Regulations

For the reasons discussed in the preamble, TTB is amending 27 CFR chapter I, part 70 as follows:

#### **PART 70—PROCEDURE AND ADMINISTRATION**

- 1. The authority citation for part 70 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6416, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656-6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

#### **§ 70.41 [Removed and Reserved]**

- 2. Section 70.41 is removed and reserved.

Signed: June 21, 2021.

**Mary G. Ryan,**  
*Administrator.*

Approved: June 21, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade and Tariff Policy).*

[FR Doc. 2021-14050 Filed 6-30-21; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR 165

[Docket Number USCG-2021-0439]

RIN 1625-AA00

#### **Safety Zone; Caruso Affiliated Holdings Fireworks Event, Newport Beach, California**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone near Balboa Pier, Newport Beach Harbor, California, around the fireworks launch barge SWOB-1, during the loading of pyrotechnics at Los Angeles Berth 184, the transit of the barge from LA Berth 184 to the display location in vicinity of Southeast of Balboa Pier and for the duration of the fireworks display, on July 4, 2021. This temporary safety zone is necessary to provide for the safety of the waterway users by keeping them clear of potential harmful debris within the fall out zone during the fireworks display scheduled to take place within Newport Beach Harbor, and the loading and transit of the explosives. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port, Los Angeles—Long Beach, or her designated representative.

**DATES:** This rule is effective from 7 p.m. through 11 p.m. on July 4, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2021-0439 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 about this proposed rulemaking, call or email the LCDR Maria Wiener, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone

(310) 521-3860, email *Maria.C.Wiener@uscg.mil*.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 E.O. Executive order  
 FR Federal Register  
 LLNR Light List Number  
 NPRM Notice of proposed rulemaking  
 Pub. L. Public Law  
 § 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. Publishing an NPRM would be impracticable in this case due to the timing of the event. The event sponsor submitted their application on May 9th, 2021 however, the application was incomplete and did not address the vessels that would be used to carry out the event. As the Coast Guard received late notification of the fireworks display vessels, there is not sufficient time for notice and comment procedures.

For the reasons stated above, we are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the fireworks event on July 4, 2021.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034; The Captain of the Port (COTP), Los Angeles—Long Beach has determined that potential hazards associated with navigation safety may arise because the fireworks display creates potential for hazards for any person or vessel within a 1,000-foot radius of the fireworks launch barge. Potential hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot

embers or other debris. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in the Newport Beach Harbor.

##### IV. Discussion of the Rule

This rule establishes a temporary safety zone on July 4, 2021, encompassing all navigable waters from the surface to the sea floor within a 100-foot radius around the fireworks launch barge SWOB-1, during the loading of the pyrotechnics at LA Berth 184, and during the transit of the fireworks barge from LA Berth 184 to the fireworks launch site in approximate position: 33°35.474' N; 117°53.296' W, in vicinity of Newport Beach Harbor. The temporary safety zone will then increase to 1,000-feet 15 minutes prior to, and for the duration of the fireworks display, expected to commence at 9 p.m. and last approximately 30 minutes. These coordinates are based on North American Datum of 1984.

No vessel or person is permitted to operate in the safety zone without obtaining permission from the Captain of the Port (COTP) or the COTP's designated representative. Sector Los Angeles—Long Beach may be contacted on VHF-FM Channel 16 or 310-521-3801. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

##### V. Regulatory Analyses

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

###### A. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be

identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This regulatory action determination is based on the size, location, duration of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

###### 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 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### 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 Management Directive 023–01 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 in an area in the vicinity of Newport Beach Harbor, Newport, CA. Such actions are categorically excluded from further review under paragraph 60(a) of Appendix A, Table 1 of the Department of Homeland Security Directive 023–01–001–01, Rev. 01. An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

### 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 46 U.S.C. 70034, 70051

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.T11–060 to read as follows:

#### § 165.T11–060 Safety Zone; Caruso Affiliated Holdings Fireworks Event, Newport Beach, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor within a 100-foot radius around the fireworks launch barge SWOB–1, during the loading of the pyrotechnics at Los Angeles Berth 184, and during the transit of the fireworks barge from Los Angeles Berth 184 to the fireworks launch site in approximate position: 33°35.474' N; 117°53.296' W, in vicinity of Newport Beach Harbor. The temporary safety zone will then increase to 1,000-feet 15 minutes prior to, and for the duration of the fireworks display, expected to commence at 9:00 p.m. and last

approximately 30 minutes. These coordinates are based on North American Datum of 1983, World Geodetic System, 1984.

(b) *Definitions.* For the purposes of 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 Los Angeles—Long Beach (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, hail Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or call at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 p.m. to 11 p.m. on July 4, 2021. The firework display is scheduled to commence at 9 p.m. This rule will be enforced during the loading, transit and duration of the fireworks display, which will be broadcasted via local Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

Dated: June 25, 2021.

**R.E. Ore,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles—Long Beach.*

[FR Doc. 2021–14052 Filed 6–30–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2021–0454]

### Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of non-enforcement of regulation.

**SUMMARY:** The Coast Guard will not enforce the safety zone for the Fleet Week Maritime Festival on waters adjacent to Pier 66 in Elliott Bay, Seattle, WA in July or August 2021. The Captain of the Port Sector Puget Sound has determined that enforcement of this



regulation is not necessary because the event is cancelled.

**DATES:** The Coast Guard does not plan to enforce regulations in 33 CFR 165.1330 from July 1, 2021 through August 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of non-enforcement, call or email Robert A.K. Nakama, U.S. Coast Guard Sector Puget Sound Waterways Management Division; telephone 206-217-6089, email *Robert.Nakama@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard normally enforces the safety zone in 33 CFR 165.1330 for the Fleet Week Maritime Festival on waters adjacent to Pier 66 in Elliott Bay, Seattle, WA. This event is held annually during the parade of ships on the last week of July or first week of August. This year, the event organizers cancelled Fleet Week. Therefore, the Coast Guard does not plan to enforce the safety zone in 33 CFR 165.1330, for July or August 2021.

In addition to this notification of non-enforcement in the **Federal Register**, if the situation changes and the Captain of the Port Sector Puget Sound (COTP) determines that the regulated area needs to be enforced, the COTP will issue a Broadcast Notice to Mariners and provide actual notice of enforcement to any persons in the regulated area.

Dated: June 21, 2021.

**P.M. Hilbert,**

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

[FR Doc. 2021-13723 Filed 6-30-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2021-0438]

RIN 1625-AA00

#### Safety Zone; Ohio River, New Richmond

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, at mile marker (MM) 450.0. This safety zone is necessary to provide for the safety of life on these navigable waters near New Richmond, Ohio during the New Richmond Fireworks.

Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley.

**DATES:** This rule is effective on July 4, 2021 from 10 p.m. through 10:30 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0438 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 Petty Officer Matthew Roberts, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513-921-9033, email *matthew.d.roberts@uscg.mil*.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this regulation by July 4, 2021 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this 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 impracticable and contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the event.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The

Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the New Richmond Fireworks, occurring on July 4, 2021 from 10 p.m. through 10:30 p.m., will be a safety concern for all navigable waters on the Ohio River, extending the entire width of the river, at mile marker (MM) 450.0. The purpose of this rule is to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event.

##### IV. Discussion of the Rule

This rule establishes a safety zone on July 4, 2021 from 10 p.m. through 10:30 p.m. on all navigable waters of the Ohio River, extending the entire width of the river, at MM 450.0. Transit into and through this area is prohibited during periods of enforcement on these dates and times. The periods of enforcement will be prior to, during, and 30 minutes after any vessel movement and during the fireworks display. The Coast Guard was informed that the operations will take place from 10 p.m. through 10:30 p.m. Enforcement of the regulated area will occur during the fireworks display. The duration of the safety zone is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector Ohio Valley. They may be contacted on VHF-FM Channel 16 or by telephone at 1-800-253-7465. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

##### V. Regulatory Analyses

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

###### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under



Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will be in place at Mile Marker 450 Ohio River on July 4, 2021 from 10 p.m. through 10:30 p.m. The Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the temporary safety zone, and this rule also allows vessels to seek permission from the COTP or a designated representative to enter the area.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 the establishment of a safety zone lasting thirty minutes that prohibits entry on all

navigable waters of the Ohio River at MM 450. 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 where indicated under **ADDRESSES**.

#### 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.T08–0438 to read as follows:

#### § 165.T08–0438 Safety zone; Ohio River, New Richmond, OH.

(a) *Location.* All navigable waters of the Ohio River at MM 450 New Richmond, Ohio.

(b) *Period of enforcement.* This temporary safety zone will be enforced on July 4, 2021 from 10 p.m. until 10:30 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply

with all lawful directions issued by the COTP or a designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: June 27, 2021.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2021-14130 Filed 6-30-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2021-0433]

RIN 1625-AA00

#### Safety Zone; Tennessee River Mile 643 to 652, Knoxville, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Tennessee River south of mile 643 to 652 on August 7, 2021. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created during the rowers associated with the event. Entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP).

**DATES:** This rule is effective from 8 a.m. to 5 p.m. on August 7, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0433 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 MST3 Joshua Rehl, U.S. Coast Guard; telephone 615-736-5421, email [Joshua.M.Rehl@uscg.mil](mailto:Joshua.M.Rehl@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of the event without ample time to allow for a reasonable comment period because we must establish this safety zone by August 7, 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**. Delaying the effective date of this rule would be impracticable because action is needed on August 7, 2021 to ensure the safety of the participants in the Three Rivers Regatta, rowing marine event.

##### 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 Sector Ohio Valley (COTP) has determined that potential hazards associated with the Three Rivers Regatta, rowing marine event, will be a safety concern for anyone within the rowing area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulated area for the duration of the rowing event.

##### IV. Discussion of the Rule

This rule establishes a temporary safety zone on the Tennessee River from mile markers 643 to 652 from 8 a.m. until 5 p.m. on August 7, 2021. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while high speed boat races are taking place. No non-participant vessels or persons will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessels and persons transiting the area must comply with all orders or directions given to them by the COTP or their designated representative. The COTP will provide

notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

##### V. Regulatory Analyses

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

###### A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone restricts transit on the Tennessee River from mile 643 to 652. The area will have limited access for a period of 9 hours. Moreover, the Coast Guard would issue Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Bulletins, as appropriate, about this safety zone so that waterway users may plan accordingly for this short restriction on transit. This rule will allow vessels to request permission to enter the safety 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 9 hours that will prohibit entry within MM 643 to 652, on the Tennessee River, of vessels for the duration of the Three Rivers Regatta, rowing marine event. 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 100 continues to read as follows:

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

■ 2. Add § 165.T08–0433 to read as follows:

#### § 165.T08–0433 Safety Zone; Knoxville, TN. Tennessee River.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of the Tennessee River from mile marker 643 to mile marker 652.

(b) *Regulations.* (1) 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 Captain of the Port Sector Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by Sector Ohio Valley command center at 502–779–5422. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(c) *Enforcement period.* This section will be enforced from 8 a.m. to 5 p.m. on August 7, 2021.

Dated: June 27, 2021.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2021–14051 Filed 6–30–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2021–0362]

#### Special Local Regulations; Beaufort Water Festival and Fireworks; Beaufort, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce two annual recurring marine events for the Beaufort Water Festival to provide for the safety of life on the Beaufort River in Beaufort, SC, during the event. The Coast Guard will enforce these two annual recurring marine events on July 16, 2021, from 9 p.m. until 10:30 p.m., on July 17, 2021, from 8 a.m. until 12:30 p.m., on July 18, 2021, from 12:30 p.m. until 3:30 p.m., and on July 24, 2021, from 12:30 p.m. until 4:30 p.m. All non-participant persons and vessels will be prohibited from entering, transiting, anchoring, or remaining within the

regulated areas during the enforcement period unless authorized by the Captain of the Port Charleston or a designated representative. The operator of any vessel in the regulated area must comply with instructions from the Coast Guard or designated representative.

**DATES:** The regulations in 33 CFR 100.704, Table 1 to § 100.704, Items No. (7) and (8), will be enforced at various times from July 16, 2021 through July 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Commander Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, email [Chad.L.Ray@uscg.mil](mailto:Chad.L.Ray@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the two annual recurring marine events listed in 33 CFR 100.704, Table 1 to § 100.704, Items No. (7) and (8), for the Beaufort Water Festival and Air Show. The Coast Guard will enforce these two annual recurring marine events on July 16, 2021, from 9 p.m. until 10:30 p.m., on July 17, 2021, from 8 a.m. until 12:30 p.m., on July 18, 2021, from 12:30 p.m. until 3:30 p.m., and on July 24, 2021, from 12:30 p.m. until 4:30 p.m. This action is being taken to provide for the safety of life on navigable waterways during this event. The regulations in § 100.704, Table 1 to § 100.704, Items No. (7) and (8), specify the locations of the regulated areas for the Beaufort Water Festival, which encompass a portion of the Beaufort River in Beaufort, South Carolina. During the enforcement periods, as reflected in § 100.704(c)(1), if you are the operator of a vessel in the regulated area you must comply with directions of the COTP Charleston or from his designated representative, including the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: June 25, 2021.

**J.D. Cole,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2021-14025 Filed 6-30-21; 8:45 am]

**BILLING CODE 9110-04-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 21-128; RM-11895; DA 21-695; FR ID 34434]

#### Television Broadcasting Services Bristol, Virginia

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On April 5, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking (NPRM)* in response to a petition for rulemaking filed by Sinclair Licensee, LLC (Petitioner), the licensee of WCYB-TV, channel 5 (NBC), Bristol, Virginia, requesting the substitution of channel 35 for channel 5 at Bristol in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 35 for channel 5 at Bristol.

**DATES:** Effective July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418-1647 or [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 86 FR 21681 on April 23, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 35. No other comments were filed. The Petitioner states that VHF channels have certain propagation characteristics which may cause reception issues for some viewers. In addition, WCYB-TV has received numerous complaints from viewers unable to receive the Station's over-the-air signal, despite being able to receive signals from other stations. While the proposed channel 35 noise limited contour does not completely encompass the relevant channel 5 noise limited contour, WCYB-TV is an NBC affiliate and there are six other NBC affiliated stations that serve some portion of the loss area, which, in the aggregate, serve the entire area of the channel 5 noise limited contour not encompassed by the proposed channel 35 contour, so that no one would lose NBC network service if channel 35 was substituted for channel 5. As the Bureau explained in the *NPRM*, it used the technical parameters of WCYB-TV's original post-transition digital channel 5 facility (File No. BPCDT-20080327AFS) in determining any predicted loss which may occur.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 21-128; RM-11895; DA 21-

695, adopted June 15, 2021, and released June 15, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Thomas Horan**

*Chief of Staff, Media Bureau.*

#### Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments, under Virginia, by revising the entry for Bristol to read as follows:

#### § 73.622 Digital television table of allotments.

\* \* \* \* \*  
(i) \* \* \*

Community		Channel No.
*	*	*

**VIRGINIA**

Community	Channel No.
* * * * *	* * * * *
Bristol .....	35
* * * * *	* * * * *

[FR Doc. 2021-13565 Filed 6-30-21; 8:45 am]

BILLING CODE 6712-01-P

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 552 and 570

[GSAR Case 2021-G527; Docket No. GSA-GSAR-2021-0014; Sequence No. 1]

RIN 3090-AK44

### General Services Administration Acquisition Regulation; Immediate and Highest Level Owner for High-Security Leased Space

**AGENCY:** Office of Acquisition Policy,  
General Services Administration (GSA).

**ACTION:** Interim rule.

**SUMMARY:** GSA is amending the General Services Administration Acquisition Regulation (GSAR) to implement Section 3 and Section 5 requirements of the Secure Federal Leases from Espionage and Suspicious Entanglement Act (the Act or Secure Federal LEASEs Act). The Act addresses the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a Federal agency.

**DATES:** *Effective:* June 30, 2021.

*Applicability:* This interim rule applies to new lease awards, the exercise of options for current leases, lease extensions, and ownership changes for high-security leased space. Except where otherwise provided, the Act's disclosure requirements shall apply with respect to any lease or novation agreement entered into on or after June 30, 2021, involving high-security leased space. That includes new, renewal, succeeding, expansion, superseding, extension, and replacing leases and novations.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before August 30, 2021 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to GSAR Case 2021-G527 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "GSAR Case 2021-G527". Select the link "Comment Now" that

corresponds with "GSAR Case 2021-G527". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2021-G527" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite "GSAR Case 2021-G527" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Carroll, Procurement Analyst, at 817-253-7858 or [GSARPolicy@gsa.gov](mailto:GSARPolicy@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARRegSec@gsa.gov](mailto:GSARRegSec@gsa.gov). Please cite GSAR Case 2021-G527.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On Dec. 31, 2020, the then president signed into law the Secure Federal Leases from Espionage and Suspicious Entanglements Act (Secure Federal LEASEs Act), (Pub. L. 116-276, 134 Stat. 3362). The Act imposes disclosure requirements regarding the foreign ownership, particularly "beneficial ownership," of prospective lessors of "high-security leased space" (*i.e.*, property leased to the Federal government having a security level of III or higher). Section 3 and Section 5 of the Act regarding immediate and highest-level ownership applies to a lease or lease novation for high-security leased space entered into six months after the date of the enactment of the Act. GSA will modify existing leases to reflect the requirements of the Act when any of the various actions highlighted in the Applicability section arise.

These requirements of the statute are applicable to leases by the U.S. General Services Administration (GSA), the Architect of the Capitol, "or the head of any Federal agency, other than the Department of Defense (DOD), that has independent statutory leasing authority" (Federal lessees). The Act is not applicable to DOD or to the intelligence community. In that regard, Section 2876 of the FY 2018 National

Defense Authorization Act (NDAA) (Pub. L. 115-91) already provides DOD similar authority to obtain ownership information with respect to its high-security leased space. GSA's regulatory action applies to GSA and to agencies relying upon GSA's leasing authority.

The Act addresses national security risks identified in the Government Accountability Office (GAO) report, GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners, dated January 2017 (GAO-17-195). This report found certain high-security Federal agencies were in buildings owned or controlled by foreign entities. According to the report, most Federal tenants were unaware the spaces GAO identified were subject to foreign ownership or control, exposing these agencies to the heightened risk of surreptitious physical or cyber espionage by foreign actors. The report also noted GAO could not identify the owners of approximately one-third of the Federal government's high-security leases because such ownership information was unavailable for those buildings.

As the US Government's "landlord," GSA serves as the central leasing agent for Federal leases and is responsible for managing and obtaining space on behalf of multiple Federal agencies. When GSA enters into a leasing agreement, the agency becomes the "tenant" of GSA, with GSA acting as the lessee of the property. GSA currently uses information contained in the System for Award Management (SAM) to collect foreign ownership information for potential lessors, including immediate or highest-level owners. However, as Congress recognized in the Act, SAM does not capture more nuanced forms of foreign control such as entities involved in financing properties or beneficial ownership.

GSA is currently reviewing and investigating potential future implementation steps and potential updates through electronic means to implement the requirements of the Act, including externally (System for Award Management) or internally (GSA's Lease Offer Platform). As these alternatives are not yet available, this interim rule will require reporting on an action-by-action basis.

*What is "high-security leased space"?*

The statute defines "high security leased space" as "space leased by a Federal lessee that—(A) will be occupied by Federal employees for nonmilitary activities; and (B) has a facility security level of III, IV or V, as

determined by the Federal tenant in consultation with the Interagency Security Committee, the Department of Homeland Security, and the General Services Administration.” Facility security levels and the process for determining these are outlined in the Interagency Security Committees publication “The Risk Management Process.”<sup>1</sup>

#### *New Disclosure Requirements*

Section 3 of the Act imposes the following requirements:

- Prior to entering into a lease agreement with a “covered entity” or allowing such a landlord to convey its interest in a leased space that qualifies as a “high-security leased space”—meaning a lease with a security level of Level III, IV, or V—a Federal lessee must require the landlord to identify and disclose whether the “immediate owner” or “highest-level owner” of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign entity, and to identify the country associated with each ownership entity. A “covered entity” is a person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, or any governmental entity or instrumentality of a government. Leases entered into by the Department of Defense and for Federal tenants within the intelligence community (as defined in the National Security Act of 1947, 50 U.S.C. 3003) are expressly excluded from these requirements.

- The Act requires disclosure of the “immediate owner” (the entity that has direct control of the offeror of a lease, as defined by ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees) and “highest-level owner” (the entity that owns or controls an immediate owner of the offeror of a lease or that owns or controls one or more entities that control the immediate owner).

- The Act also requires disclosure of whether an entity is involved in the financing of the leased space is a foreign person or entity. GSA has provided a definition of “financing” at 552.270–33.

- Once a lease is executed, the Act requires annual disclosure of the foreign ownership of the landlord (and financing of the property) with respect to each prior one year period.

- Section 3 of the Act applies to any lease or novation agreement entered into on or after June 30, 2021.

- This Section of the Act requires that a covered entity (*i.e.*, “a person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group”; or “any governmental entity or instrumentality of a government”) identify and disclose whether the immediate or highest-level owner of the leased space, including an entity involved in financing of the property, is a foreign person or a foreign entity, including the country of origin associated with the ownership, before a Federal lessee enters into a lease agreement with a covered entity or approves a novation agreement with a covered entity that involves a change of ownership under a lease for high-security leased space.

- Under the Act, an “immediate owner” is “an entity, other than the offeror of a lease, that has direct control of the offeror, including ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees” and a “highest-level owner” is “the entity that owns or controls an immediate owner of the offeror of a lease, or that owns or controls 1 or more entities that control an immediate owner of the offeror.” If a disclosure is made, the Federal lessee is required to notify the Federal tenant of the building (or other improvement) that will be used for high-security space and to consult with the Federal tenant regarding security concerns and to determine whether mitigation measures are necessary prior to lease award or approval of the novation agreement.

- A covered entity is required to provide this ownership information in response to a solicitation for offers issued by the Federal lessee or before approving a novation agreement for a lease. Covered entities also must update the information provided to the Federal lessee annually. The information that must be provided on an annual basis includes: The list of immediate or highest-level owners of the covered entity during the preceding one-year period of Federal occupancy or the information required to be provided relating to each such immediate or highest-level owner.

Section 4 of the Act is not addressed in this regulation. It will be implemented through separate rulemaking and is outlined here for awareness. Section 4 also imposes disclosure requirements for beneficial ownership:

- Subject to the development of GSA’s government-wide plan for obtaining ownership information outlined in Section 4 of the Act, covered entities also will be required to disclose information about beneficial ownership. A “beneficial owner” is “with respect to a covered entity, each natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises control over the covered entity; or (ii) has a substantial interest in or receives substantial economic benefits from the assets of the covered entity.” However, a beneficial owner of a covered entity does not include: A minor child, a person acting as a nominee, intermediary, custodian, or agent on behalf of another person; a person acting solely as an employee of the covered entity and whose control over or economic benefits from the covered entity derives solely from the employment status of the person; a person whose only interest in the covered entity is through a right of inheritance or a creditor of the covered entity unless either also meets the definition of “beneficial owner.” This disclosure will be addressed in a future rule.

- Comments are welcome on foreign ownership, including beneficial ownership, with the understanding that such comments may help inform a future regulatory action.

#### *Additional Lease Language*

Lease agreements for high-security leased space will be required to include language that limits the access to the leased space by the covered entity and any member of the property management company responsible for the space without prior approval from the Federal tenant. The Federal tenant may only grant access to the high-security leased space (or any property or information located in the space) if the tenant determines that access is “clearly consistent with [its] mission and responsibilities.” The Federal lessee is required to have written procedures, signed by both the Federal lessee and the covered entity, that govern “access to the high-security leased space in case of emergencies that may damage the leased property.”

#### *Government-Wide Plan for Obtaining Ownership Information*

Section 4 of the Act requires GSA, in conjunction with the Office of Management and Budget (OMB), to develop a government-wide plan for agencies to identify all immediate, highest-level, or beneficial owners of high-security leased spaces before

<sup>1</sup> *Interagency Security Committees publication “The Risk Management Process”, March 2021*

entering into a lease agreement with a covered entity for the accommodation of a Federal tenant in a high-security leased space.

The plan must require the disclosure of any immediate, highest-level, or beneficial owner that is a foreign person and notification by the Federal lessee of high-security space to the affected Federal tenant of such foreign ownership. The plan, however, must exclude collecting ownership information on widely held pooled-investment vehicles, mutual funds, trusts, or other pooled-investment vehicles. The Act requires GSA to submit the plan to specific Congressional committees by Dec. 31, 2021 and to implement the plan by Dec. 31, 2022. This plan will be separately addressed in a future rule, and is not included in this interim rule.

Unlike the direct control-based immediate owner and highest-level owner, the Act defines the term “beneficial owner” to include any person that—through a contract, arrangement, understanding, relationship, or otherwise—exercises control over the covered entity or has a substantial interest in or receives substantial economic benefits from the assets of the covered entity, with some exceptions. GSA and OMB’s plan must require the Federal lessee to collect the foreign ownership information for any immediate, highest-level, or beneficial owner that is a foreign person and, upon such a disclosure of foreign ownership, to notify and consult with the Federal tenant.

#### *Implications of the Act and Related Rulemakings*

This Act is one of several recent examples of congressional concern about foreign ownership and control and congressional action in the world of government contracting to help address potential national security concerns. *See, e.g.*, FY 2021 NDAA (Pub. L. 116–283), § 819, Modifications to Mitigating Risks Related to Foreign Ownership, Control, or Influence of DOD Contractors and Subcontractors; § 885, Disclosure of Beneficial Owners in Database for Federal Agency Contract and Grant Officers; § 6403, Beneficial Ownership Information Reporting Requirements.

Covered entities already provide certain information on immediate and highest-level ownership through the System for Award Management registration process, per OMB Control Numbers 9000–0097 and 9000–0185. However, covered entities will need to provide additional information through a manual representation regarding any

financing entities and foreign ownership details for the enhanced requirements per Section 3 of the Act. Additionally, subject to the development and implementation of GSA’s government-wide plan for Section 4 of the Act, through separate rulemaking, covered entities will need to provide disclosure of creditors who may be deemed beneficial owners if they either exercise control over the covered entity or have a substantial interest in or receive substantial economic benefits from the covered entity’s assets. Therefore, property owners will need to take this provision into account when considering financing options for leasing high-security space to the Federal government.

#### **II. Requirements Contained in This Rulemaking and Related Rulemakings**

With this rule, GSA is implementing Section 3 and Section 5 of the Act.

##### *Section 3—*

- Requires Federal lessees for high-security leased space to require covered entities to identify and disclose whether the owner of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign entity, including the country associated with the ownership entity, before entering into a lease agreement. Covered entities must provide Federal lessees such information—

- when first submitting proposals in response to a solicitation for offers issued by the lessee; and

- annually, to include the list of immediate or highest level owners of the covered entity during the preceding one-year period of occupancy.

- Requires the Federal lessee to notify the Federal tenant in writing if such a disclosure of foreign ownership is made and consult with the tenant regarding any security concerns prior to awarding a new lease agreement.

##### *Section 5—*

- Requires that leases for high-security space include certain language regarding access to the high-security leased space by the covered entity and any member of the property management company.

Section 4 of the Act requires the identification of beneficial owners of high-security leased spaces and will be addressed in a subsequent rulemaking through GSAR Case 2021–G522 and FMR Case 2021–102–1. In addition, the FAR Council has opened FAR Case 2021–005 which will implement sections 885 and 6403 of the NDAA for FY 2021 (Pub. L. 116–283) to require certain offerors to disclose beneficial

ownership information in their offers for contracts over the simplified acquisition threshold.

Finally, other agencies may need to do additional rulemaking because the GSAR only governs the contract terms and conditions for leased space procured by GSA and its delegated agencies.

#### **III. Authority for This Rulemaking**

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including in the GSAR, to control the relationship between GSA and contractors. In addition, the Secure Federal LEASES Act, authorizes the collection of ownership information for high-security leased space.

#### **IV. New GSAR Requirements**

With this rule, GSA is implementing one new GSAR representation and one new GSAR clause. The new representation is 552.270–33 (Foreign Ownership and Financing Representation for High-Security Leased Space) and the new clause is 552.270–34 (Access to Limitations for High-Security Leased Space). Both apply to new lease awards, the exercise of options for current leases, lease extensions, and ownership changes for high-security leased space. Except where otherwise provided, the Act’s disclosure requirements shall apply with respect to any lease or novation agreement entered into on or after June 30, 2021, involving high-security leased space. That includes new, renewal, succeeding, expansion, superseding, extension, and replacing leases and novations.

The new GSAR representation implemented in 552.270–33 requires offerors for high-security leased space to identify whether the immediate owner, highest-level owner, or an entity involved in the financing of the lease is foreign-owned. If so, they must represent the associated country. Awardees will also be required to represent on an annual basis. This representation also applies upon extensions, exercise of renewal options and change of ownership/novations.

The new GSAR clause at 552.270–34 requires lessors for high-security leased space to limit access to the space unless approved by an authorized Government representative.

#### **V. Expected Impact of the Rule**

GSA anticipates that this rule will have an impact on current Federal lessors of high-security leased space, future potential lessors of high-security leased space, and the Federal lessor



industry of high-security leased space. The rule seeks to ensure effective implementation and enforcement of the national security measures imposed by the Secure Federal LEASEs Act with minimal disruption to the mission of GSA and its Federal tenants and Federal lessors. As set forth in Section VI.(d) below, GSA recognizes the benefits that will result from this rule.

GSA notes that this rule is one of several actions with regard to the Secure Federal LEASEs Act and other statutes regarding foreign ownership by GSA, other agencies with lease authority promulgating their own rules, and by the FAR Council. GSA understands that the impact of actions dealing with foreign ownership, including specifically beneficial owners, is not well understood and is still being assessed.

In addition, while this interim rule, specific to Sections 3 and 5 of the Secure Federal LEASEs Act, will be effective June 30, 2021, GSA is seeking public comment, including, as indicated below, on the potential impact of this rule on Federal lessors. After considering the comments received, a final rule will be issued, taking into account and addressing the public comments, as well as helping to shape implementation of future rules like beneficial ownership. GSA plans to share public comments received on such questions with other agencies and the FAR Council.

## VI. Regulatory Impact Analysis

The cost and benefit impacts of amending the General Services Administration Acquisition Regulation (GSAR) to implement certain requirements outlined in the Secure Federal LEASEs Act (SFLA) (Pub. L. 116–276) are discussed in the analysis below. This analysis was developed by GSA in consultation with agency procurement officials and the GSA Office of Leasing. Section VI.(h) of this rule is requesting specific feedback regarding the impact of this rule, as well as other pertinent policy questions of interest, in order to inform finalization of this and potential future subsequent rulemakings.

### (a) Risks to Industry of Not Complying With SFLA

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences. Therefore, it is important for contractors to develop a compliance plan that will allow them to submit

accurate representations to the Government in the course of their offers.

GSA notes that this interim rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that this rule will not result in these activities, and therefore no moving costs have been included in this regulatory impact analysis.

### (b) Contractor Actions Needed for Compliance

GSA assumes that most Federal lessors maintaining high-security leased space or Federal lessors that are competing for solicitations for high-security leased space are already familiar with the majority of the requirements of this rule, or, similarly, will not find the requirements of this interim rule as anything significantly more than what is currently expected. GSA previously implemented ownership disclosures requirements through internal policy<sup>2</sup>, GSA's Request for Lease Proposals (or solicitations), and GSA's guidance through its public-facing Leasing Desk Guide<sup>3</sup> and Leasing Alerts and Lease Acquisition Circulars.<sup>4</sup>

#### (1) GSA Leasing—Current Processes

Regardless of who owns the leased space, Federal agencies are already taking risk management measures appropriate for the security level of the space. The GSA Leasing Desk Guide<sup>5</sup> outlines requirements and standards for new and replacement space. In Chapter 19 (issued in 2012), it provides

<sup>2</sup> In March 2017, GSA's Office of Leasing issued Leasing Alert LA-FY17-06 requiring Lease Contracting Officers (LCOs) to determine whether the ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances, so that the agency can take any needed security mitigation measures. The Leasing Alert outlined the procedures to make this determination which involved a review of the entity's SAM registration; the Leasing Alert also required this review for all lease procurements and novations, regardless of the Facility Security Level (FSL).

In October 2018, GSA added a "Foreign Ownership and Financing Representation," to be included with all Request for Lease Proposals (RLP) packages issued for prospectus-level lease projects. This "paper" representation required the offeror to confirm both foreign ownership and foreign financing.

<sup>3</sup> GSA's *Leasing Desk Guide* (Desk Guide).

<sup>4</sup> GSA's *Leasing Alerts and Lease Acquisition Circulars* (LAC).

<sup>5</sup> The Desk Guide chapters contain authorities, policies, technical and procedural guides, and administrative limitations governing the acquisition by lease of real property. Chapter 19 is specific to security requirements.

instructions for competitive procurements based on the Interagency Security Committee (ISC),<sup>6</sup> Physical Security Standards, and it outlines the Public Buildings Service's (PBS) responsibilities for performing background investigations on the lessors' contractors.

In addition, a 2018 GSA Leasing Alert,<sup>7</sup> provided required and recommended measures for lessors related to cybersecurity protections and precautions in leased facilities. It establishes lease language that prohibits lessors from connecting any portion of their building and access control systems (BACS) to any federally-owned or operated IT network and requires notification for cybersecurity incidents that impact a federal tenant's safety, security, or proper functioning. The lease language also outlines recommended cybersecurity measures that lessors are encouraged to follow.

Lessors are already currently required to report certain ownership information. As previously outlined, GSA currently uses information contained in the System for Award Management (SAM) to collect foreign ownership information for potential lessors, including immediate or highest-level owners, and provides such information to tenant agencies. While this rule requires additional information related to the lessor's financing, the review of immediate or highest-level owner detail has already been in place and is a requirement Federal lessors are familiar with.

#### (2) GSA Leasing—General Security Framework

As outlined in the GSA Leasing Desk Guide, the facility security level (FSL)<sup>8</sup> for each space requirement is set by the Department of Homeland Security-Federal Protective Service (FPS) and the client agency, in consultation with the GSA as part of the requirements development phase of a lease acquisition. If the client agency and FPS have not already conferred, GSA must coordinate with the necessary parties to set the appropriate level of security before the solicitation is drafted. The Desk Guide states that GSA Leasing

<sup>6</sup> A Federal committee dedicated to the protection of Federal civilian facilities in the United States. It has 21 primary member agencies and 30 associate member agencies. The ISC has developed standards applicable to all civilian Federal facilities, including leased facilities.

<sup>7</sup> LA-FY18-05, *Cybersecurity Measures for Leased Facilities*.

<sup>8</sup> A categorization based on the analysis of several security-related facility factors, which serves as the basis for the implementation of countermeasures specified in ISC standards. (*CISA ISC Standard, March 2021*).



acquisition members must maintain contact as necessary with the appropriate FPS inspector throughout the lease administration. The facility security level designation does not change solely based on lessor ownership information collected via this rule.

### (3) GSA Leasing—Determining Countermeasures

GSA follows the Interagency Security Committee (ISC) provided standard for Physical Security Criteria (PSC) for Federal Facilities. This standard establishes baseline physical security measures for each FSL. This standard defines the process for determining the appropriate security measures; it also covers any uncommon measures required to address the unique risks at a particular facility. The GSA Desk Guide currently uses the PSC to prescribe the process for determining appropriate countermeasures for a facility. Adherence to this process (1) ensures that all security criteria will be considered; (2) defines the relationship between the levels of risk determined for each undesirable event and; (3) mitigates risk through countermeasures that provide a commensurate Level of Protection (LOP). The lessor ownership information does not affect the PSCs for Federal Facilities and therefore GSA does not anticipate this rule to have a significant impact on the security standards used by GSA tenants.

### (c) Compliance Plan Estimated Due to Interim Rule

GSA assumes the following steps would most likely be part of a lessor's plan that would need to be developed by any entity to stay in compliance with the new representation clause at GSAR 552.270–33 and other clause at GSAR 552.207–34 being implemented by this rule:

1. Regulatory Familiarization. The entity must read and understand the GSAR rules and the resulting necessary actions for compliance.

2. Workforce Training. The entity must educate its purchasing/procurement professionals<sup>9</sup> to ensure that they are familiar with the representation and clause and their disclosure requirements (as applicable).

3. Compliance with Clauses. The entity must identify and disclose whether the immediate or highest-level owner of the leased space, including an entity involved in the financing thereof,

<sup>9</sup> GSA estimates that the purchasing/procurement professional requiring training as a result of this rule on average would be equal to a mid-career professional. The equivalent labor category used to capture cost estimates therefore is a GS–12 Step 5, or Journeyman Level 1.

is a foreign person or a foreign entity, including the country associated with the ownership entity. If a disclosure is made, the Federal lessee shall notify the Federal tenant of the building or other improvement that will be used for high-security space in writing, and consult with the Federal tenant regarding security concerns and necessary mitigation measures, if any, prior to award of the lease or approval of the novation agreement.

### (d) Benefits

This Act requires the identification of all individuals who own or benefit from partial ownership of a property that will be leased by the federal government for high-security use. The statute is in response to a 2017 Government Accountability Office (GAO) report which indicated that Federal agencies were vulnerable to espionage and other intrusions because foreign actors could gain unauthorized access to spaces used for classified operations or to store sensitive data. Agencies store law enforcement evidence and other sensitive data and are often unaware of foreign ownership of their office spaces. While many of the foreign owners identified in the 2017 GAO report were companies based in allied countries such as Canada, Norway, Japan or South Korea, other properties were owned and managed by entities based in more adversarial nations. The report noted Chinese-owned properties, in particular, presented security challenges because of the country's proclivity for cyberespionage and the close ties between private sector companies and the Chinese government. The GAO report highlighted the dangers posed by these properties, indicating that "leasing space in foreign-owned buildings could present security risks such as espionage, unauthorized cyber and physical access to the facilities, and sabotage."

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly sophisticated methods to harm the Nation.<sup>10</sup> Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.<sup>11</sup> Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure, and steal sensitive information and industrial

<sup>10</sup> *National Counterintelligence Strategy of the United States of America 2020–2022.*

<sup>11</sup> *National Counterintelligence Strategy of the United States of America 2020–2022.*

secrets.<sup>12</sup> The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.<sup>13</sup>

Additionally, by requiring "Financing Entity" information in the representation clause, GSA will benefit by better understanding the source of funds used to finance projects. Risks associated with financing, such as money laundering, involve disguising financial assets so they can be used without detection of the illegal activity that produced them.<sup>14</sup> These transactions further shield the entity from a recorded connection to the funds by providing a plausible explanation for the source of the funds.<sup>15</sup> Typical examples used for this type of activity include the purchase and resale of real estate, investment securities, foreign trusts, or other assets.<sup>16</sup> By collecting this information, GSA will be able to share more transparent information on foreign financing of leases with tenant agencies.

The goal of the Act is to close security loopholes by directing the GSA to design a verification system that identifies a property's owners if the space would be used for high-security purposes. While GSA and other Federal agencies have made positive changes in response to GAO's 2017 report, this rule will help support current best practices being followed more uniformly throughout the Federal government.

Finally, this Act ensures that GSA (and all agencies particularly with independent leasing authority) will have the ability to obtain information on foreign ownership and provide it to relevant Federal tenants.

### (e) Public Costs

During the first and subsequent years after publication of the rule, lessors will need to learn about the clauses and its requirements. GSA estimates this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation of a purchasing/

<sup>12</sup> *National Counterintelligence Strategy of the United States of America 2020–2022.*

<sup>13</sup> *National Counterintelligence Strategy of the United States of America 2020–2022.*

<sup>14</sup> Government Accountability Office Report ((GAO–17–195), *GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, dated January 2017.

<sup>15</sup> Government Accountability Office Report ((GAO–17–195), *GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, dated January 2017.

<sup>16</sup> Government Accountability Office Report ((GAO–17–195), *GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, dated January 2017.

procurement mid-career professional. The equivalent labor category used to capture cost estimates therefore is a GS-12 Step 5.

A. To estimate the aggregate burden to Government lessors of complying with the rule, the number of lessors that will be impacted was calculated using numbers pulled from GSA's records and databases.<sup>17</sup> As of June 2021, GSA has approximately 7,860 leases totaling approximately 183,000,000 in Rentable Square Footage (RSF) and approximately \$5,600,000,000 in annual rent (\$2,800,000,000 of that total represents small entities). Of the 7,860, approximately 1,263<sup>18</sup> (or 16 percent) of the leases are for high-security lease space (lease space in a facility with a security level of III, IV, or V) totaling approximately 87,000,000 in RSF and approximately \$3,000,000,000 in annual rent. Approximately 68 percent<sup>19</sup> of the leasing entities are small entities. High-security leases with these small entities represents \$1,370,000,000 in annual rent covering approximately 37,000,000 RSF.

B. GSA also delegates leasing authority to several agencies, which are required to follow GSA's policies. GSA

estimates there are 1,300<sup>20</sup> buildings represented by these agencies with Delegated Leasing Authority<sup>21</sup> from GSA. GSA does not have data available that identifies which of these are for high-security lease space. GSA assumes that these delegated agencies have a similar profile to GSA's for high-security leased space to total portfolio space, *i.e.*, 16 percent. This would bring the total number of high-security lease space for delegated agencies to 208 (1,300 × 16 percent). GSA also assumes the same profile for small entities of 68 percent.

C. Based on historical data maintained by GSA's Office of Leasing, GSA estimates that 6 percent of its high-security leased space will be solicited for a new contract each year (6 percent of 1,263 = 76 leases). These solicitations result from a mix of expiring high-security leases or new requirements for high-security facilities. GSA assumes these trends will continue for the time horizon outlined by this regulatory impact. Based on historic bid rates and high current vacancy levels, GSA further estimates that 3 lessors will make offers for these high-security lease procurement for a total of 228 offers (76

high-security leases awarded \* 3 lessors competing for each solicitation. 76 \* 3 = 228) GSA assumes the same profile for delegated facilities.

D. Since 2014, GSA has averaged approximately 31 renewal options per year for high-security leases (equal to approximately 17 percent of all renewals options during the same period) and averaged approximately 106 extensions for existing high-security leases (also equal to approximately 17 percent of all extensions during the same period). GSA assumes the same trend will continue in subsequent years. GSA assumes the same profile for delegated facilities.

E. GSA processed 380 novations from May 1, 2020 to April 30, 2021<sup>22 23</sup> (therefore approximately 5 percent of leases resulted in a novation (380/7,860)). GSA does not have data on how many of those were related to FSL III, IV, or V. GSA will assume 16 percent of those novations were for FSL III, IV, or V leases. Therefore, it is assumed 61 novations were processed for high-security leases in the last year.

A breakdown is provided in the table below.

Par above		GSA	Delegated authority agencies
A,B	Leased Space	7,860	1,300
A,B	High-Security (HS) Space Leases (16 percent)	1,263	208
	Total HS Portfolio	1,263	208
	Existing HS Lease Baseline	1,263	208
	Combined HS Lease Baseline	1,471 (1,263 + 208)	
C	New Procurements (6 percent HS)	76	12
C	New Offers (x3)	228	36
	Total New Responses	228	36
D	Renewals (17 percent HS)	31	35
D	Extensions (17 percent HS)	106	35
E	Novations (5 percent Leases)	380	65
E	High-Security Space Novations (16 percent)	61	10
	Total HS Novations	61	10
	New HS Lease Baseline	426 (228+31+106+61)	116 (36+35+35+10)
	Combined New HS Lease Baseline	542 (426 + 116)	

<sup>17</sup> If not otherwise stated, numbers related to leases are provided by the GSA Office of Leasing through surveying their internal databases.

<sup>18</sup> The GSA Office of Leasing provided this number by surveying their internal database.

<sup>19</sup> This information is based on internal inventory data sources provided by the GSA Office of Leasing.

<sup>20</sup> This information is based on internal inventory data sources provided by the GSA Office of Leasing.

<sup>21</sup> Federal Management Regulation (FMR) Bulletin 2008-B1 limits the square footage permissible under a General Purpose lease delegation to 19,999 usable ANSI/BOMA ("ABOA") square feet of space; since FSL designations are tied

to square footage in addition to other factors, this estimate is likely higher than actual.

<sup>22</sup> This information is based on internal inventory data sources provided by the GSA Office of Leasing.

<sup>23</sup> GSA does not have data on how many novation other agencies with Delegated Leasing Authority processed.

## Steps to Compliance

### 1. Regulatory Familiarization

Below is a list of compliance activities related to regulatory familiarization that GSA anticipates will occur:

#### a. Familiarization With GSAR 552.270–33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take existing high-security lessors approximately 3 hours<sup>24</sup> each to familiarize themselves with the new GSAR representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$372,000$ <sup>25</sup> ( $= 3 \text{ hours} \times \$84.16$ <sup>26</sup>  $\times 1,471$ ). Of the 1,471 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,000 lessors, are small entities.

After the initial familiarization in the first year for each current awardee or subsequent awardee, GSA estimates it will take 15 minutes (0.25 hours<sup>27</sup>) to stay familiar with the representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$31,000$  ( $= 0.25 \text{ hours} \times \$84.16 \times 1,471$ ).

ii. GSA estimates that new high-security lessors each year will take approximately 3 hours<sup>28</sup> each to familiarize themselves with the new GSAR representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$137,000$ <sup>29</sup> ( $= 3 \text{ hours} \times \$84.16 \times 542$ ). Of the 542 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 369 lessors, are small entities.

<sup>24</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>25</sup> Totals are rounded.

<sup>26</sup> This hourly rate, \$84.16, is the 2021 GS rate for a GS–12 Step 5 of \$42.08 per hour (using the rate for the rest of the United States) adjusted upward by 100 percent to account for fringe benefits and overhead.

<sup>27</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>28</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>29</sup> Totals are rounded.

#### b. Familiarization With GSAR 552.270–34, Access to Limitations for High-Security Leased Space

i. GSA estimates that it will take existing high-security lessors approximately 2 hours<sup>30</sup> each to familiarize themselves with the clause at GSAR 552.270–34. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$248,000$  ( $= 2 \text{ hours} \times \$84.16 \times 1,471$ ). Of the 1,471 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,000 lessors, are unique small entities.

After the initial familiarization in the first year for each current awardee or subsequent awardee, GSA estimates it will take 15 minutes (0.25 hours<sup>31</sup>) to stay familiar with the representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$31,000$  ( $= 0.25 \text{ hours} \times \$84.16 \times 1,471$ ).

ii. GSA estimates that new high-security lessors each year will take approximately 2 hours<sup>32</sup> each to familiarize themselves with the clause at GSAR 552.270–34. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$108,000$  ( $= 2 \text{ hours} \times \$84.16 \times 542$ ). Of the 542 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 369 lessors, are small entities.

The total estimated cost to become familiar with the representation clause (GSAR 552.270–33) and the other new clause (GSAR 552.270–34) is estimated to be  $\$619,000$  for the existing high-security lessors. In subsequent years, this cost is estimated to be  $\$290,000$  for new high-security lessors annually.

### 2. Implementation of Workforce Training

The entity must educate its purchasing/procurement professionals to ensure that they are familiar with the representation and clause and their disclosure requirements (as applicable).

<sup>30</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>31</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>32</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

a. GSA estimates that it will take existing high-security lessors approximately 6 hours<sup>33</sup> each to train their workforce on the representation clause at GSAR 552.270–33 and the GSAR clause at 552.270–34. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$743,000$  ( $= 6 \text{ hours} \times \$84.16 \times 1,471$ ). Of the 1,263 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,000 lessors, are small entities.

After the initial training in the first year for each current awardee or subsequent awardee, GSA estimates it will take 30 minutes (0.50 hours<sup>34</sup>) to conduct continuing additional workforce training. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$62,000$  ( $= 0.50 \text{ hours} \times \$84.16 \times 1,471$ ).

b. GSA estimates that new high-security lessors each year will take approximately 6 hours each to train their workforce on the representation clause at GSAR 552.270–33 and the GSAR clause at 552.270–34. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$274,000$  ( $= 6 \text{ hours} \times \$84.16 \times 542$ ). Of the 542 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 369 lessors, are small entities.

The total estimated cost to implement workforce training for the representation clause (GSAR 552.270–33) and the access limitation clause (GSAR 552.270–34) is estimated to be  $\$743,000$  for the existing high-security lessors. In subsequent years, this cost is estimated to be  $\$336,000$  for new high-security lessors annually.

### 3. Compliance With Clauses

#### a. GSAR 552.270–33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take existing high-security lessors approximately 2 hours<sup>35</sup> each to

<sup>33</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>34</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>35</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

complete the representation at sections (c)(1), (d)(1), and (e)(1) (essentially no required disclosures required) of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$248,000$  ( $= 2 \text{ hours} \times \$84.16 \times 1,471$ ). Of the 1,471 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1000 lessors, are small entities.

ii. GSA estimates that new high-security lessors each year will take approximately 2 hours each to complete the representation at sections (c)(1), (d)(1), and (e)(1) (essentially no required disclosures required) of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$91,000$  ( $= 2 \text{ hours} \times \$84.16 \times 542$ ). Of the 542 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 369 lessors, are small entities.

iii. GSA further estimates that of the existing high-security lessors, 10 percent<sup>36</sup> (or 147 lessors) will respond affirmatively to one or more sections at (c)(1), (d)(1), and (e)(1) of the representation clause that the offeror “does” have an “immediate owner”, and/or “is” owned or controlled by another entity (or “highest owner”), and/or “does” involve a “foreign entity” and will be required to complete additional section at (c)(2) and (c)(3), potentially (c)(4), (d)(2) and (d)(3), potentially (d)(4), and (e)(2). GSA estimates that it will take these offerors an additional 10 hours<sup>37</sup> to complete those various sections of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$124,000$  ( $= 10 \text{ hours} \times \$84.16 \times 147$ ). Of the 147 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 100 lessors, are unique small entities.

iv. GSA estimates that of the new high-security lessors each year, 10 percent<sup>38</sup> (or 54 lessors) will respond affirmatively to one or more sections at (c)(1), (d)(1), and (e)(1) of the representation clause that the offeror “does” have an “immediate owner”, and/or “is” owned or controlled by

another entity (or “highest owner”), and/or “does” involve a “foreign entity” and will be required to complete additional sections at (c)(2) and (c)(3), potentially (c)(4), (d)(2) and (d)(3), potentially (d)(4), and (e)(2). Thus, approximately 54 lessors (10 percent of 542) need to fully complete GSAR 552.270–33. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$45,000$  ( $= 10 \text{ hours} \times \$84.16 \times 54$ ). Of the 54 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 37 lessors, are small entities.

After the existing and new high-security lessors complete the representations, GSA estimates it will take 15 minutes (0.25 hours<sup>39</sup>) to update any information as necessary and as required annually. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$34,000$  ( $= [0.25 \text{ hours} \times \$84.16 \times 1,471] + [.25 \times \$84.16 \times 147]$ ).

#### b. GSAR 552.270–34, Access to Limitations for High-Security Leased Space

i. GSAR 552.270–34 requires lessors for high-security leased space to limit access to the space unless approved by an authorized Government representative. GSA estimates that 10 percent of lessors, or 147 (10 percent of 1,471) will request approval once per lease and will take an estimated 3 hours<sup>40</sup> to submit each request. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$37,000$  ( $= 3 \text{ hours} \times \$84.16 \times 147$ ). Of the 147 lessors impacted by this part of the rule, GSA assumes that 68 percent, or 100 lessors, are small entities.

ii. GSA estimates that 10 percent, or 54 (10 percent of 542) of new high-security lessors each year will request approval once per lease and will take an estimated 3 hours<sup>41</sup> to submit each request. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$14,000$  ( $= 3 \text{ hours} \times \$84.16$

$\times 54$ ). Of the 54 lessors impacted by this part of the rule, GSA assumes that 68 percent, or 37 lessors, are small entities.

iii. GSA acknowledges that existing high-security lessors will be required to establish written procedures, as documented in the Government’s Occupant Emergency Plan, governing access to the high-security leased space in case of emergencies. GSA estimates that reviewing these procedures will take approximately 3 hours.<sup>42</sup> Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$371,000$  ( $= 3 \text{ hours} \times \$84.16 \times 1,471$ ). Of the 1,471 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1000 lessors, are small entities.

iv. GSA acknowledges that new high-security lessors will be required to sign written procedures, as documented in the Government’s Occupant Emergency Plan, governing access to the high-security leased space in case of emergencies. GSA estimates that reviewing these procedures will take approximately 3 hours.<sup>43</sup> Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$137,000$  ( $= 3 \text{ hours} \times \$84.16 \times 542$ ). Of the 542 lessors impacted by this part of the rule, GSA assumes that 68 percent, or 369 lessors, are small entities.

After the existing high-security lessors initially establishes the written procedures, GSA estimates it will take 15 minutes (0.25 hours<sup>44</sup>) to update any information as necessary. Therefore, GSA calculated the total estimated cost for this part of the rule to be  $\$31,000$  ( $= 0.25 \text{ hours} \times \$84.16 \times 1,471$ ).

The total estimated cost to complete both the representations and the clause is estimated to be  $\$780,000$  the existing high-security lessors. In subsequent years, this cost is estimated to be  $\$351,000$  for new high-security lessors annually.

#### 4. Public Total Costs

The total cost of the above Cost Estimate is  $\$2,100,000$  in the first year

<sup>36</sup> The amount of lessors impacted is an assumption based on subject matter expert judgment.

<sup>37</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>38</sup> The amount of lessors impacted is an assumption based on subject matter expert judgment.

<sup>39</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>40</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>41</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>42</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>43</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

<sup>44</sup> The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

after publication. The total cost of the above Cost Estimate in subsequent years is \$977,000 annually.

The following is a summary of the estimated costs calculated for a 10 year time horizon in perpetuity at a 3- and 7-percent discount rate:

Summary	Total costs
Present Value (3 percent) .....	\$9,500,000
Annualized Costs (3 percent) ...	1,100,000
Present Value (7 percent) .....	7,950,000
Annualized Costs (7 percent) ...	1,330,000

GSA notes that this interim rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that this rule will not result in these activities, and therefore no moving costs have been included in this regulatory impact analysis.

GSA acknowledges that there is uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this notice, GSA will seek to update these estimates which could increase the estimated costs.

#### (f) Government Cost Analysis

During the first and subsequent years after publication of the rule, leasing acquisition members (which includes a combination of Leasing Contracting Officers, Lease Administration Managers, Realty Specialists, and General Counsel) will need to learn about the clauses and its requirements. GSA estimates this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation, on average, of a GS-12 leasing acquisition member. GSA assumes that leasing acquisition members will, on average, stay consistent in subsequent years. Numbers and assumptions apply to delegated agencies as well.

GSA anticipates several areas of impact as a result of this rule. These impacts mirror the public impacts and will appear as regulatory familiarization, workforce training, and time to review compliance with clauses. These costs are justified in light of the compelling national security objective that this rule will advance.

For consistency, the number of leases to be reviewed match the numbers in

the “Existing HS Lease Baseline” row (1,471 combined) and “New annual Lease Baseline” row (542 combined) found in table in section VI.(e).

#### 1. Regulatory Familiarization

a. GSA estimates that it will take approximately 516 leasing acquisition members 1.5 hours to become familiar with the GSAR 552.270–33 representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$65,000<sup>45</sup> (= 1.5 hours × \$84.16 × 516).

After the initial familiarization, GSA estimates it will take 15 minutes (0.25 hours) to stay familiar with the representation in subsequent years. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$11,000 (= 0.25 hours × \$84.16 × 516).

b. GSA estimates that it will take approximately 516 leasing acquisition members 30 minutes (0.5 hours) to become familiar with the GSAR 552.270–34 representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$22,000 (= 0.50 hours × \$84.16 × 516).

After the initial familiarization, GSA estimates it will take 6 minutes (0.10 hours) to stay familiar with the representation in subsequent years. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$4,300 (= 0.10 hours × \$84.16 × 516).

#### 2. Workforce Training

The Government must educate its leasing acquisition members to ensure that they are familiar with the representation and clause and how to review and act on the submitted information, access requests, and written procedures.

a. GSA estimates that it will take approximately 516 leasing acquisition members 1 hour to complete training related GSAR 552.270–33 representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$43,000 (= 1 hours × \$84.16 × 516).

After the initial training, GSA estimates it will take 6 minutes (0.10 hours) to maintain training related to the representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$4,300 (= 0.10 hours × \$84.16 × 516).

b. GSA estimates that it will take approximately 516 leasing acquisition members 30 minutes (0.50 hours) to complete training related to the GSAR

552.270–34 clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$22,000 (= 0.50 hours × \$84.16 × 516).

After the initial training, GSA estimates it will take 3 minutes (0.05 hours) to maintain training related to the clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$2,200 (= 0.05 hours × \$84.16 × 516).

#### 3. Review of Compliance With Clauses

The primary cost to GSA will be to review the representations required by GSAR 552.270–33 and the compliance with GSAR 552.270–34.

##### a. GSAR 552.270–33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take leasing acquisition members approximately 6 minutes (0.10 hours) to review the representation at sections (c)(1), (d)(1), and (e)(1) (essentially no required disclosures required) of the representation clause at GSAR 552.270–33 for existing high-security lessors. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$12,000 (= 0.10 hours × \$84.16 × 1,471).

ii. GSA estimates that for new high-security lessors each year, it will take leasing acquisition members approximately 6 minutes (0.10 hours) to review the representation at sections (c)(1), (d)(1), and (e)(1) (essentially no required disclosures required). Therefore, GSA calculated the total estimated cost for this part of the rule to be \$4,600 (= 0.10 hours × \$84.16 × 542).

iii. GSA estimates that for existing high-security lessors, 10 percent (or 147 lessors) will respond affirmatively to one or more sections at (c)(1), (d)(1), and (e)(1) of the representation clause that the offeror “does” have an “immediate owner”, and/or “is” owned or controlled by another entity (or “highest owner”), and/or “does” involve a “foreign entity” and will be required to complete additional sections at (c)(2) and (c)(3), potentially (c)(4), (d)(2) and (d)(3), potentially (d)(4), and (e)(2). GSA estimates that it will take leasing acquisition members 5 hours to complete the reviews on those various sections of the representation clause, notify the Federal tenant of the building or other improvement of any security concerns and necessary mitigation measures (if any) prior to award or approval of a novation agreement. Therefore, GSA calculated the total

<sup>45</sup> All totals in the Government Cost Analysis section are rounded.

estimated cost for this part of the rule to be \$62,000 (= 5 hours × \$84.16 × 147).

iv. GSA estimates 10 percent, or 54 lessors, of new high-security lessors each year will respond affirmatively to one or more sections at (c)(1), (d)(1), and (e)(1) of the representation clause that the offeror “does” have an “immediate owner”, and/or “is” owned or controlled by another entity (or “highest owner”), and/or “does” involve a “foreign entity” and will be required to complete additional sections at (c)(2) and (c)(3), potentially (c)(4), (d)(2) and (d)(3), potentially (d)(4), and (e)(2). GSA estimates that it will take leasing acquisition members 5 hours to complete the reviews on those various sections of the representation clause, notify the Federal tenant of the building or other improvement of any security concerns and necessary mitigation measures (if any) prior to award or approval of a novation agreement. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$23,000 (= 5 hours × \$84.16 × 54).

b. GSAR 552.270–34, Access to Limitations for High-Security Leased Space

i. GSAR 552.270–34 requires lessors for high-security leased space to limit access to the space unless approved by an authorized Government representative. GSA estimates that 10 percent of lessors, or 147 (10 percent of 1,471) will request approval once per lease and it will take the leasing acquisition member an estimated 3 hours to review and approve the request. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$37,000 (= 3 hours × \$84.16 × 147).

ii. GSA estimates that for new high-security lessors, 10 percent of lessors (or approximately 54) will request approval once per lease and it will take the leasing acquisition members an estimated 3 hours to review and approve the request. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$14,000 (= 3 hours × \$84.16 × 54).

iii. GSA acknowledges that the rule will require written procedures, as documented in the Government’s Occupant Emergency Plan,<sup>46</sup> governing access to the high-security leased space in case of emergencies. GSA estimates that writing these procedures will take approximately 2 hours. Therefore, GSA calculated the total estimated cost for

this part of the rule to be \$248,000 (= 2 hours × \$84.16 × 1,471).

iv. GSA acknowledges that the rule will require, for new high-security leases, written procedures, as documented in the Government’s Occupant Emergency Plan, governing access to the high-security leased space in case of emergencies. GSA estimates that writing these procedures will take approximately 2 hours. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$91,000 (= 2 hours × \$84.16 × 542).

After the first year the rule is implemented, GSA estimates it will take 6 minutes (0.10 hours) to update any information in the subsequent years for the written procedures. GSA does not estimate any additional significant burden with access requests. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$12,000 (= 0.10 hours × \$84.16 × 1,471).

The total estimated cost to GSA to review representations and written procedures is estimated to be \$359,000 in the first year after publication. The total estimated cost to GSA to review representations and written procedures annually is estimated to be \$145,000.

4. Reduced Competition

GSA acknowledges both new clauses may lead to reduced competition. Some lessors may choose to exit the Federal market, particularly lessors that primarily lease to the private sector, because of the additional disclosure requirements, and the subsequent reduced level of competition may increase prices. However, estimated costs faced by contractors represent a small fraction of lease payments, and therefore GSA expects effects along these lines to be minimal.

5. Government Total Costs

The total cost of the above Cost Estimate is \$511,000 in the first year after publication. The total cost of the above Cost Estimate in subsequent years is \$166,000 annually.

The following is a summary of the estimated costs calculated for a 10 year time horizon at a 3- and 7-percent discount rate:

Summary	Total costs
Present Value (3 percent) .....	\$1,750,000
Annualized Costs (3 percent) .....	205,000
Present Value (7 percent) .....	1,488,000
Annualized Costs (7 percent) .....	212,000

GSA notes that this interim rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it

authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that this rule will not result in these activities, and therefore no moving costs have been included for in this regulatory impact analysis.

6. Overall Total Costs

The overall total cost of the above Cost Estimate, including both Public and Government costs, is \$2,653,000 in the first year after publication. The overall total cost of the above Cost Estimate, including both Public and Government costs in subsequent years, is \$1,143,000 annually.

The following is a summary of the estimated overall total costs calculated for a 10 year time horizon at a 3- and 7-percent discount rate inclusive of both Public and Government costs:

Summary	Total costs
Present Value (3 percent) .....	\$11,216,000
Annualized Costs (3 percent) .....	1,315,000
Present Value (7 percent) .....	9,439,000
Annualized Costs (7 percent) .....	1,344,000

(g) Analysis of Alternatives

*Alternative 1:* GSA could take no regulatory action to implement this statute. However, this alternative would not provide any implementation and enforcement of the important national security measures imposed by the law. Moreover, the general public would not experience the benefits of improved national security resulting from the rule as detailed above in Section VI.(d). As a result, we reject this alternative.

*Alternative 2:* GSA could take a more stringent approach to the requirements of the Act and apply the new clauses to not only all GSA leases and delegated leases for FSL III, IV, or V space but for all FSL designations. However, given the relatively low levels of risk at those facilities, as described by the ISC, compared with the costs and burden applying this new representation clause and access clause,<sup>47</sup> no additional benefit would be gained. As a result, we reject this alternative.

GSA also considered issuing an acquisition letter, but concluded the best alternative was to issue this interim rule directly implementing the statute and allowing for public comment.

<sup>47</sup> As this Regulatory Impact Analysis only considers 1,471 high-security leases (or approximately 16% of the GSA leasing portfolio), it’s reasonable to estimate that if the entire portfolio was included, costs could be approximately 5X more costly than currently shown.

<sup>46</sup> The GSA Office of Leasing will develop a templated Plan for all leasing acquisition members to use. Therefore, it will not require individual development of each plan by each member. This will lessen the burden.

*(h) Specific Questions for Comment*

To understand the exact scope of the impact of this rule and how this impact could be affected in subsequent rulemaking, GSA welcomes input on the following assumptions and questions regarding anticipated impact on affected parties.

**Assumption 1:** As previously stated, GSA assumes that most Federal lessors maintaining high-security leased space or Federal lessors that are competing for solicitations for high-security leased space are already familiar with the majority of the requirements of this rule, or, similarly, will not find the requirements of this interim rule as anything significantly more than what is currently expected. GSA previously implemented ownership disclosures requirements through internal policy,<sup>48</sup> GSA's Request for Lease Proposals (or solicitations), GSA's guidance through its public-facing Leasing Desk Guide,<sup>49</sup> Leasing Alerts and Lease Acquisition Circulars.<sup>50</sup>

**Question 1:** If this assumption is not valid, to what extent are the requirements in this rule significantly different from what GSA has currently been doing as part of its procedures for foreign ownership disclosure?

**Assumption 2:** GSA estimates that this rule will impact mainly the Federal lessor industry.

**Question 2:** If this assumption is not valid, is there another industry(s) to which this rule will cause significant impact or disruption?

**Assumption 3:** The impact of this rule will not significantly change the way current Federal lessors interact with GSA (or other Federal agencies with independent leasing authority).

**Question 3:** If this assumption is not valid, to what extent will this rule change how you interact with GSA (or other Federal agencies with independent leasing authority)?

<sup>48</sup> In March 2017, GSA's Office of Leasing issued Leasing Alert LA-FY17-06 requiring Lease Contracting Officers (LCOs) to determine whether the ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances, so that the agency can take any needed security mitigation measures. The Leasing Alert outlined the procedures to make this determination which involved a review of the entity's SAM registration; the Leasing Alert also required this review for all lease procurements and novations, regardless of the Facility Security Level (FSL).

In October 2018, GSA added a "Foreign Ownership and Financing Representation," to be included with all Request for Lease Proposals (RLP) packages issued for prospectus-level lease projects. This "paper" representation required the offeror to confirm both foreign ownership and foreign financing.

<sup>49</sup> GSA's *Leasing Desk Guide* (Desk Guide).

<sup>50</sup> GSA's *Leasing Alerts and Lease Acquisition Circulars* (LAC).

**Assumption 4:** The impact of this rule will not significantly reduce the number of lessors competing for High-Security Leased Space solicitations.

**Question 4:** If this assumption is not valid, to what extent will this rule reduce the likelihood of you—lessor to the Federal Government for High-Security Leased Space—from not competing for future solicitations of High-Security Leased Space?

**Assumption 5:** The compliance activities, and associated costs, estimated by GSA are stated at Section VI.(e).

**Question 5:** Is there a compliance activity that GSA has failed to consider? If so, please specify the activity, explain the activity, describe the impact of the activity, and please estimate the annual cost of such activities and subsequent yearly activity costs.

**Question 6:** Is there a compliance activity that GSA has noted that is significantly understated (in terms of annual and subsequent costs)? If so, which compliance activity and what specifically was understated? Please explain how the compliance activity should be estimated.

**Assumption 7:** Other agencies relying upon GSA's leasing authority have similar profiles of high security leases in their inventory.

**Question 7:** What information is available to better estimate high security leases in other agency inventories?

**Assumption 8:** GSA sufficiently detailed all compliance requirements for the rule.

**Question 9:** What additional information or guidance do you view as necessary to effectively comply with this rule?

**Question 10:** What other challenges do you anticipate facing in effectively complying with this rule?

**Question 11:** What thoughts or observations would you like to share regarding foreign ownership, including beneficial ownership, for GSA to consider in subsequent rule-making?

## VII. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has been reviewed in accordance with E.O. 12866

Section 6(b) and determined by OMB to be a significant regulatory action. See Section VI for a regulatory impact analysis of the rule.

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This interim rule has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

## IX. Regulatory Flexibility Act

The General Services Administration does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis has been performed, and is summarized as follows:

The purpose of this interim rule is to implement certain requirements outlined in the Secure Federal LEASEs Act (Pub. L. 116-276) into the GSAR.

The objective of the rule is to prescribe appropriate policies and procedures to address the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a Federal agency. One new representation and one new clause have been developed to support these policies and procedures: GSAR 552.270-33 (representation) and GSAR 552.270-34 (clause). Both will be required in all novations, solicitations and contracts for leased space that (1) will be occupied by Federal employees for nonmilitary activities; and (2) have a facility security level of III, IV, or V.

A new representation requirement at GSAR 552.270-33 will be incorporated into all new lease awards, options exercised for current leases, lease extensions, and ownership changes for high-security leased space. Except where otherwise provided, the statutory disclosure requirements shall apply with respect to any lease or novation agreement entered into on or after June 30, 2021, involving high-security leased space. That includes new, replacing, succeeding, and superseding leases, renewal options, extensions, and novations. This includes actions involving small entities. The representation requires offerors for high-security leased space to identify whether the immediate owner, highest-level owner, or an entity involved in the financing of the lease is foreign-owned. If so, they must represent



the associated country. Awardees will also be required to re-represent on an annual basis. This representation also applies upon change of ownership/novations.

As of June 2021, GSA has approximately 7,860 leases in total. Approximately 68 percent (5,345) of leasing entities were small entities. This information is based on internal inventory data sources. Approximately 1,263 of GSA portfolio leases are for high-security lease space (lease space in a facility with a security level of III, IV, or V). 76 leases per year are estimated to be solicited for new high-security space procurements. These solicitations result from a mix of expiring high-security leases or new requirements for high-security facilities. Using the approximation above (68 percent), GSA estimates that for the 1,263 lessors already maintaining leased space at a Level III, IV, or V secure facility approximately 859 will be small entities (1,263\*68 percent). If GSA includes agencies with delegated leasing authority, the approximate number of total leases at a Level III, IV, or V is 1,471. This would increase the approximate number of small entities to 1000 (from 859). For the estimated 76 solicitations in subsequent years, assuming 3 offerors per solicitation, approximately 155 will be submitted by small entities.

The clause at GSAR 552.270–34 requires lessors for high-security leased space to limit access to the space unless approved by an authorized Government representative.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

Because of the requirements outlined by the statute, it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. However, in order to reduce the burden imposed on the public, GSA is currently reviewing and investigating potential future implementation through electronic means, including externally (System for Award Management) or internally (GSA's Lease Offer Platform).

Entities that provide affirmative responses when completing the representation at 552.270–33 would be required to provide additional representation information in their offers for high-security leases.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2021–G527) in correspondence.

## X. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. GSA has requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. GSA has determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the immediate and highest level owner disclosure requirement for high-security leased space in the Secure Federal LEASEs Act goes into effect on June 30, 2021.

b. The collection of information is essential to the mission of GSA to ensure compliance with the Secure Federal LEASEs Act and protect the Government supply chain from risks posed by foreign owners.

c. Moreover, GSA cannot comply with existing representations because public harm is reasonably likely to result if current procedures are followed. Specifically, authorizing collection of this information will ensure that GSA does not enter into leases that are in violation of the Secure Federal LEASEs Act or enter into, extend, or renew leases with any entity or lessor that is in violation of the Secure Federal LEASEs Act.

This requirement supports implementation of Section 3 of the Secure Federal LEASEs Act (Pub. L. 116–276) for high-security leased space. This section requires offerors to identify the immediate or highest-level owner of the space, including any financing entity, and disclose whether that owner or financing entity is a foreign person or entity, including the country associated with the ownership entity. The offerors shall (1) provide such identification and disclosure when first submitting a proposal in response to a solicitation; and, if awarded the lease, (2) update such information annually.

This requirement is partially implemented in the Federal Acquisition Regulation (FAR) through the provisions at FAR 52.204–3, Taxpayer Identification, FAR 52.204–7, System for Award Management, FAR 52.204–17, Ownership and Control of Offeror, and clause at FAR 52.204–13, System for Award Management Maintenance. OMB Control Numbers 9000–0097 and 9000–0185 cover the FAR provisions and clause. However, the FAR does not account for foreign financing as required by the Act.

The annual public reporting burden for this collection of information through GSAR 552.270–33 is estimated based on the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

### 1. Initial Disclosure

#### *Baseline Representation*

*Estimated annual responses:* 542.

*Estimated hours per response:* 2.

#### *Additional Representation*

*Estimated annual responses:* 54.

*Estimated hours per response:* 10.

*Total Initial Response Burden Hours:* 1,624.

### 2. Annual Updates

*Estimated annual responses:* 542.

*Estimated hours per response:* 0.25.

*Total Update Response Burden Hours:* 136.

*Public comments are particularly invited on:* Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

## XI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services (GSA) that urgent and compelling circumstances necessitate that this interim rule go into effect earlier than 60 days after its publication date.

Since the Secure Federal LEASEs Act was signed on December 30, 2020, GSA has been working diligently to implement the statute, which has multiple effective dates embedded. Specifically, Section 7 requires implementation of the Section 3 requirements by June 30, 2021.

Given the complexity of the Secure Federal LEASEs Act, this rule required thorough efforts to reach out to other agencies and conduct up-front analysis. These factors have left GSA with insufficient time to publish the rule with 60 days before the legislatively established effective date of June 30, 2021, or to complete full public notice and comment before the rule becomes



effective. As noted, however, GSA is seeking public comment on this interim rule and will consider and address those comments.

It is worth noting this rule follows FAR rules dealing with ownership disclosure and supply chain security, such as FAR Case 2012-024 which added FAR provision 52.204-17 and FAR Case 2019-009 which added FAR provision 52.204-24. As such, Government agencies are already authorized to collect certain immediate and highest-level owner information (reference OMB Control Numbers 9000-0097 and 9000-0185).

Having an implementing regulation in place by the effective date is important to avoid confusion, uncertainty, and potentially substantial legal consequences for agencies and the lessor community. The statute requires lessors to identify and disclose whether the immediate or highest-level owner of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign entity, including the country associated with the ownership entity. If they did so without an implementing regulation in place, contractors would have no guidance as to how to comply with the requirement.

For the foregoing reasons, pursuant to 41 U.S.C. 1707(d), GSA finds that urgent and compelling circumstances make compliance with the notice and comment and delayed effective date requirements of 41 U.S.C. 1707(a) and (b) impracticable, and invokes the exception to those requirements under 1707(d). While a public comment process will not be completed prior to the rule's effective date, GSA will consider comments submitted in response to this interim rule in issuing a subsequent rulemaking.

**List of Subjects in 48 CFR Parts 501, 552, and 570**

Government procurement.

**Jeffrey A. Koses,**

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 501, 552, and 570 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 552, and 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM**

■ 2. In section 501.106, amend table 1 by adding entries for “552.270-33” and

“570.703(c)” in numerical order to read as follows:

**501.106 OMB approval under the Paperwork Reduction Act.**

GSAR reference	OMB control No.
* * *	* * *
552.270-33 .....	3090-0324
570.703(c) .....	3090-0324
* * *	* * *

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Add sections 552.270-33 and 552.270-34 to read as follows:

**552.270-33 Foreign Ownership and Financing Representation for High-Security Leased Space.**

As prescribed in 570.703(c), use the following clause:

**Foreign Ownership and Financing Representation For High Security Leased Space (JUN 2021)**

(a) *Definitions.* As used in this clause—  
*Financing* means the process of raising or providing funds through debt or equity for purposes of meeting the requirements of the Lease, including, but not limited to, acquisition, maintenance, and construction of, or improvements to, the Property.

*Foreign entity* means a:  
(i) Corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group that is headquartered or organized under the laws of a country that is not the United States or a state, local government, tribe, or territory within the United States; or  
(ii) Government or governmental instrumentality that is not the United States Government.

*Foreign person* means an individual who is not:

- (i) A United States citizen; or
- (ii) An alien lawfully admitted for permanent residence in the United States.

*Highest-level owner* means the entity that owns or controls an immediate owner of the offeror or Lessor, or that owns or controls one or more entities that control an immediate owner of the offeror or Lessor. No entity owns or exercises control of the highest-level owner.

*Immediate owner* means an entity, other than the offeror or Lessor, that has direct control of the offeror or Lessor. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

*Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity.

See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) *Timing.* The Offeror or Lessor shall complete this representation when submitting a proposal. If the Offeror is the successful awardee, the Offeror (now Lessor) shall review, update, and provide this representation on an annual basis, reflecting all changes to immediate owner, highest-level owner and financing during the preceding 1-year period, starting one year from the Lease Term Effective Date through final payment of any contract. If the Lessor intends to transfer the lease to a successor in interest under the circumstances set forth in FAR 42.1204, the Lessor shall submit this representation to the Lease Contracting Officer with any request to novate the lease. The Offeror or Lessor is responsible for the currency, accuracy and completeness of the data disclosed, and for any liability resulting from the Government's reliance on inaccurate or incomplete data.

(c) *Immediate owner.* (1) The Offeror or Lessor represents that it  does or  does not have an immediate owner.

(2) If the Offeror or Lessor indicates “does” in paragraph (c)(1) of this clause, then enter the following information for the immediate owner. If the offeror or Lessor has more than one immediate owner (e.g., joint venture), then the offeror or Lessor shall provide the information for each entity.

Legal name (do not use a “doing business as” name).	
Unique entity identifier (if available).	

(3) If the Offeror or Lessor indicates “does” in paragraph (c)(1) of this clause, then complete this additional representation: Is the immediate owner a foreign entity?  Yes or  No.

(4) If the Offeror or Lessor indicates “does” in paragraph (c)(1) of this clause, then complete this additional representation: Is the immediate owner a foreign person?  Yes or  No.

(5) If the Offeror or Lessor indicates “Yes” in either paragraph (c)(3) or (4) of this clause, indicating that there is foreign ownership (as a foreign entity or foreign person), then enter the following information for the foreign owner (respond for each as applicable).

Physical address.	
Country.	

(d) *Highest-level owner.* (1) The Offeror or Lessor represents that the immediate owner, if any,  is or  is not owned or controlled by another entity?

(2) If the Offeror or Lessor indicates “is” in paragraph (d)(1) of this clause, indicating that the immediate owner is owned or controlled by another entity, then enter the following information for the highest-level owner.

Legal name (do not use a “doing business as” name).	
Unique entity identifier (if available).	

(3) If the Offeror or Lessor indicates “is” in paragraph (d)(1) of this clause, then complete this additional representation: Is the highest-level owner a foreign entity?  Yes or  No.

(4) If the Offeror or Lessor indicates “is” in paragraph (d)(1) of this clause, then complete this additional representation: Is the highest-level owner a foreign person?  Yes or  No.

(5) If the Offeror or Lessor indicates “Yes” in either paragraph (d)(3) or (4) of this clause, indicating that there is foreign ownership (as a foreign entity or foreign person), then enter the following information for the foreign owner (respond for each as applicable).

Physical address.	
Country.	

(e) *Financing entity.* (1) The Offeror or Lessor represents that the financing  does or  does not involve a foreign entity?

(2) The Offeror or Lessor represents that the financing  does or  does not involve a foreign person?

(3) If the Offeror or Lessor indicates “does” in either paragraph (e)(1) or (2) of this clause, indicating foreign financing (as a foreign entity or foreign person), then enter the following information for the foreign financing (respond for each as applicable).

Legal name (do not use a “doing business as” name).	
Unique entity identifier (if available).	
Physical address.	
Country.	

(End of clause)

#### 552.270–34 Access Limitations for High-Security Leased Space.

As prescribed in 570.703(d), use the following clause:

##### Access Limitations for High-Security Leased Space (Jun 2021)

(a) The Lessor, including representatives of the Lessor’s property management company responsible for operation and maintenance of the leased space, shall not—

(1) Maintain access to the leased space; or  
(2) Have access to the leased space without prior approval of the authorized Government representative.

(b) Access to the leased space or any property or information located within that Space will only be granted by the Government upon determining that such access is consistent with the Government’s mission and responsibilities.

(c) Written procedures governing access to the leased space in the event of emergencies shall be documented as part of the Government’s Occupant Emergency Plan, to be signed by both the Government and the Lessor.

(End of clause)

#### PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 4. Add section 570.118 to subpart 570.1 to read as follows:

##### 570.118 Foreign Ownership Disclosure.

If a foreign ownership disclosure is made pursuant to clause 552.270–33:

(a) The contracting officer shall notify the Federal tenant for the leased space in writing:

(1) If the disclosure is made during the lease acquisition process, the contracting officer shall notify the Federal tenant prior to lease award.

(2) If the disclosure is made concurrent with a request for novation, the contracting officer shall notify the Federal tenant prior to executing the novation.

(3) If the disclosure is made concurrent with a renewal option or extension, the contracting officer shall notify the Federal tenant prior to executing the renewal option or extension.

(b) The contracting officer shall coordinate with the Federal tenant regarding security concerns and any necessary mitigation measures.

■ 5. Amend section 570.703 by adding paragraphs (c) and (d) to read as follows:

##### 570.703 GSAR contract clauses.

\* \* \* \* \*

(c) Insert the representation clause at 552.270–33, Foreign Ownership and Financing Representation for High-Security Leased Space, in novations, solicitations and contracts for leased space that:

(1) Will be occupied by Federal employees for nonmilitary activities; and

(2) Has a facility security level of III, IV, or V.

(d) Insert the clause at 552.270–34 Access Limitations for High-Security Leased Space, in novations, solicitations and contracts for leased space that:

(1) Will be occupied by Federal employees for nonmilitary activities; and

(2) Has a facility security level of III, IV, or V.

[FR Doc. 2021–14161 Filed 6–30–21; 8:45 am]

BILLING CODE 6820–61–P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

[Docket No. FWS–R4–ES–2019–0059; FF09E21000 FXES1111090000 212]

RIN 1018–BD09

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Suwannee Moccasinshell

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Suwannee moccasinshell (*Medionidus walkeri*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 190 miles (306 kilometers) of stream channels in Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Madison, Suwannee, and Union Counties, Florida, and Brooks and Lowndes Counties, Georgia, fall within the boundaries of the critical habitat designation. The effect of this regulation is to designate critical habitat for the Suwannee moccasinshell under the Act. **DATES:** This rule is effective August 2, 2021.

**ADDRESSES:** This final rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2019–0059 and at <https://www.fws.gov/panamacity/>. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. All of the comments, materials, and documentation that we considered in this rulemaking are available upon mailed request from U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; or by telephone 850–769–0552.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2019–0059, and at the Panama City Ecological Services Field Office at <https://www.fws.gov/panamacity/> (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the

U.S. Fish and Wildlife Service website and upon mailed request to the Field Office set out above, and may also be included in the preamble and at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jay B. Herrington, Field Supervisor, U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850-769-0552. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under Section 4(a)(3) of the Act, if we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We listed the Suwannee moccasinshell as a threatened species on November 7, 2016 (81 FR 69417). We are designating a total of approximately 190 mi (306 km) of stream channel in three units as critical habitat for the Suwannee moccasinshell.

*Basis for this rule.* Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

*Economic analysis.* In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the Suwannee moccasinshell. We published the announcement of, and solicited public comments on, the draft economic analysis (DEA; 84 FR 65325, November 27, 2019). Because we received no comments on the DEA, we adopted the DEA as a final version.

*Peer review and public comment.* In accordance with our peer review policy

published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with the Suwannee moccasinshell and its habitat, biological needs, and threats. We received a response from one peer reviewer who agreed with the information in the proposed critical habitat rule. We also considered all comments and information received from the public during the comment period on the proposed designation.

**Previous Federal Actions**

On October 6, 2015 (80 FR 60335), we proposed to list the Suwannee moccasinshell as a threatened species. On October 6, 2016 (81 FR 69417), we published the final listing rule, which added the Suwannee moccasinshell to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). On November 27, 2019 (84 FR 65325), we proposed to designate critical habitat for the Suwannee moccasinshell. All other previous Federal actions for the Suwannee moccasinshell are described in one or more of the documents discussed above.

**Summary of Comments and Recommendations**

In our November 27, 2019, proposed critical habitat rule, we requested written comments from the public on the proposed designation and the associated DEA by January 27, 2020. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed critical habitat designation and DEA during the comment period. Notices of the availability of these documents for review and inviting public comment were published by the Tallahassee Democrat on December 4, 2019, Gainesville Sun and Gilchrist Journal on December 5, 2019, and Valdosta Daily Times and Suwannee Democrat on December 11, 2019. We received nine comments during the 60-day comment period. We did not receive any requests for a public hearing. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

*Comments From States*

Section 4(b)(5)(A)(ii) of the Act requires the Service to give actual notice of any designation of lands that are considered to be critical habitat to the appropriate agency of each State in

which the species is believed to occur, and invite each such agency to comment on the proposed regulation. The Florida Fish and Wildlife Conservation Commission (FWC) provided comments in support of the designation of critical habitat, and provided additional information related to current and future threats. Specifically, the FWC provided a publication by Holcomb *et al.* (2018, entire) on the strong connection between spring discharge and species occupancy; information on a proposed surface mining operation along the New River; and a publication by Neupane *et al.* (2019, entire) that assessed the hydrologic responses to projected climate change in the Suwannee River basin. We incorporated this new information into the final rule.

*Public Comments*

We received eight public comments on the proposed rule. Several commenters indicated support for the habitat protection of the Suwannee moccasinshell. None of the comments were substantive so as to require the Service's response.

**Summary of Changes From the Proposed Rule**

After consideration of the comments we received during the public comment period (refer to Summary of Comments and Recommendations above), and new information published or obtained since the proposed rule was published, we made changes to the final critical habitat rule. Many small, nonsubstantive changes and corrections, not affecting the determination (e.g., updating the Background section in response to comments, minor clarifications), were made throughout the document. Below is a summary of changes made to the final rule.

(1) We incorporated information on the strong connection between spring discharge and species occupancy from Holcomb *et al.* (2018, entire) into the discussion of natural flow regimes in the *Habitats Protected From Disturbance* section under Physical or Biological Features Essential to the Conservation of the Species.

(2) We incorporated information from Neupane *et al.* (2018, entire), provided by FWC (see above), that assessed the hydrologic responses to projected climate change scenarios in the Suwannee River basin into the discussion of natural flow regimes in the *Habitats Protected From Disturbance* section under Physical or Biological Features Essential to the Conservation of the Species.

(3) We incorporated information received from FWC (see above) on a

proposed surface mining operation in the upper Santa Fe River sub-basin into the discussion of physical or biological features that may require special management considerations or protection within Unit 1 under Final Critical Habitat Designation.

### Critical Habitat

#### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of

critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas

are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally from the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is

unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### **Physical or Biological Features Essential to the Conservation of the Species**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size

required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

#### *Space for Individual and Population Growth and for Normal Behavior*

Mussels generally live embedded in the bottom of stable streams and other bodies of water, in areas where flow velocities are sufficient to remove finer sediments and provide well-oxygenated waters. The Suwannee moccasinshell inhabits creeks and rivers where it is found in substrates of sand or a mixture of sand and gravel, and in areas with slow to moderate current (Williams 2015, p. 2). The species is often associated with large woody material embedded in the substrate, which may help stabilize substrates and act as a flow refuge. The Suwannee moccasinshell, similar to other freshwater mussels, is dependent on areas with flow refuges, where shear stress is relatively low and sediments remain stable during high flow events (Strayer 1999, pp. 468, 472; Hastie *et al.* 2001, pp. 111–114; Gangloff and Feminella 2007, p. 71). Substrates that remain stable in high flows conceivably allow these relatively sedentary animals to remain in the same general location throughout their entire lives. These habitat conditions not only provide space for Suwannee moccasinshell populations, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring.

#### *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*

Freshwater mussels, such as the Suwannee moccasinshell, siphon water into their shells and across four gills that are specialized for respiration, food collection, and brooding larvae in females. Food items include fine detritus (particles of organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431, Vaughn *et al.* 2008, p. 410). Adult mussels obtain food items both from the water column and from the sediment, either by taking water in through the incurrent siphon or by moving material extracted from sediments into their shell using cilia (hair-like structures) on their foot. For the first several months, juvenile mussels feed primarily with their foot, although they also may filter interstitial (pore) water (Yeager *et al.* 1994, pp. 217–221). Food availability and quality for the Suwannee moccasinshell is affected by habitat stability, floodplain connectivity, flow, and water and sediment quality. Adequate food availability and quality is essential for normal behavior, growth, and viability during all life stages of this species.

The Suwannee moccasinshell is a riverine species that depends upon adequate amounts of flowing water. Flowing water transports food items to the sedentary juvenile and adult life stages, provides oxygen for respiration, removes wastes, transports sperm to females, and maintains the stream bottom habitats where the species is found (the effects of flow alteration on habitat is discussed below under *Habitats Protected From Disturbance*). A sufficient amount of continuously flowing water is a feature essential to this species.

Important water quality parameters for freshwater mussels include (but are not limited to) dissolved oxygen (DO), temperature, pH, salinity, and suspended sediment. As relatively sedentary animals, mussels must tolerate the full range of physical and chemical conditions that occur naturally within the streams where they persist, but many species are considered sensitive to disturbance. Water quality within the Suwannee River basin may vary according to season, geology, climate events, and human activities within the watershed. Dissolved oxygen (DO) and water temperature are important parameters for freshwater mussel early life stages, which are more sensitive to deviations from normal ranges. Water temperature also plays an important role in the overall water quality, including oxygen solubility and

ammonia toxicity. Increased stream temperatures and decreased dissolved oxygen concentrations are important secondary effects associated with flow reduction and cessation (Haag and Warren 2008, pp. 1174–1176). Sensitive mussel species like the Suwannee moccasinshell may suffer lethal and nonlethal effects to low dissolved oxygen levels and elevated stream temperatures (Gagnon *et al.* 2004, p. 672; Golladay *et al.* 2004, p. 501; Haag and Warren 2008, pp. 1174–1176; Spooner and Vaughn 2008, p. 313), and are particularly susceptible to these conditions during early life stages (Sparks and Strayer 1998, pp. 132–133; Pandolfo *et al.* 2010, p. 965; Archambault *et al.* 2013, p. 247). Water temperatures of not more than 91 °F (32 °C), and DO concentrations of not less than 5.0 milligrams per liter (mg/L) represent important thresholds for freshwater mussels (Sparks and Strayer 1998, pp. 132–133; Gagnon *et al.* 2004, p. 672; Pandolfo *et al.* 2010, p. 965; Khan *et al.* 2019, p. 6). The specific physical and chemical tolerance ranges needed by the Suwannee moccasinshell for normal behavior, growth, and viability of all life stages have not been investigated. In the absence of species-specific data, we are using the current numeric standards for water quality criteria adopted by the States under the Clean Water Act (CWA). We find these criteria represent sustainable levels for aquatic life that would provide for the conservation of the species.

#### *Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring*

Sites for breeding, reproduction, and development are tied to areas in stable rivers and creeks where flow velocities are sufficient to maintain habitats, and bottom substrates are composed of sand or a mixture of sand and gravel (see *Space for Individual and Population Growth and for Normal Behavior* above). Juvenile mussels depend upon areas where substrates remain stable during high flow events. The presence of large embedded logs may contribute to substrate stability and act as flow refuges. The larvae of most freshwater mussels are parasitic, requiring a period of encystment on a fish host in order to transform into juvenile mussels. Thus, the presence of appropriate host fishes to complete its reproductive life cycle is essential to the Suwannee moccasinshell. In laboratory host trials, Suwannee moccasinshell larvae transformed primarily on the blackbanded darter (*Percina nigrofasciata*) and to a lesser extent on the brown darter (*Etheostoma edwini*) (Johnson *et al.* 2016, p. 171). The

blackbanded darter is one of the most abundant darter species in coastal plain streams, and the distribution of both fish species overlap with the historical distribution of the Suwannee moccasinshell (Kuehne and Barbour 1983, pp. 29–30; Robins *et al.* 2018, pp. 317, 336).

#### *Habitats Protected From Disturbance*

The Suwannee moccasinshell's habitat has been impacted by pollution and reduced flows throughout its range, and by channel instability and excessive sedimentation in portions of its range (see *Factor A, The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* of the proposed listing rule).

An environment free from toxic levels of pollutants is essential to the Suwannee moccasinshell, especially to its early life stages. There is no specific information on the sensitivity of the species to common municipal, agricultural, and industrial pollutants. However, as a group, freshwater mussels are more sensitive to pollution than many other aquatic organisms and are one of the first species to respond to water quality impacts (Haag 2012, p. 355). A detailed discussion of pollution issues in the basin and potential effects to the Suwannee moccasinshell is provided in the proposed listing rule (80 FR 60335) under *Factor A*.

The Suwannee moccasinshell depends upon a natural flow regime to maintain its benthic habitats. Altered flow regimes (including higher peak flows, lower base flows, and changes to seasonal flow pulses) within the basin are attributable to altered stormwater runoff patterns, lowering of the groundwater table, recent periods of drought, and climate change. Developed areas and some agricultural lands shed water extremely quickly during storm events. Urban areas significantly affect water quantity because of the high percentage of impervious cover and increases in water consumption. Rainfall on impervious surfaces is immediately transported to stream channels, causing increases in flow volume and velocity. These effects are discussed further in the next section and in the final listing rule under *Factor A, Stream Channel Instability*.

Because less infiltration occurs in developed areas, less groundwater recharge occurs and stream base flows may be reduced. The distinctive geology of the Suwannee River basin relies heavily on spring discharge to buffer the tannic waters of the mainstem, and groundwater recharge is limited in the region due to confinement of the aquifer. Over 250 springs located in this

system have been threatened by increased demand for water resources within the basin and adjacent basins. The combined effects of groundwater pumping and prolonged droughts have resulted in lower groundwater tables and reduced flow and dewatering of basin streams and springs for extended periods (Grubbs and Crandall 2007, p. 78; Torak *et al.* 2010, pp. 46–47). The springs provide refugia for aquatic organisms during periods of drought when groundwater has the most influence on water quality and quantity. Recent surveys found the species only in portions of the basin with significant contributions from spring discharge and failed to locate the species in areas without this influence (Holcomb *et al.* 2018, pp. 99–100). The strong connection between spring discharge and Suwannee moccasinshell occupancy indicates that groundwater discharge via springs is important to maintaining flows and water quality needed by the species, especially during drought (Holcomb *et al.* 2018, p. 95).

Reductions in stream flow may also alter hydraulically mediated sediment sorting throughout the river, which may displace or otherwise alter Suwannee moccasinshell habitat. Climate scenarios for the years 2050 and 2080 predict changes to seasonal and annual hydrology of the Suwannee River basin due to a wetter and warmer climate in the region (Neupane *et al.* 2018, pp. 2232–2238). Within the basin, surface runoff is projected to increase as a result of increased precipitation, and summer stream flow is projected to decrease substantially (up to 25%) by 2080 due to the effects of higher air temperature (Neupane *et al.* 2018, p. 2240).

Because freshwater mussels are relatively long-lived and have limited mobility, habitat stability is a requirement shared by nearly all freshwater mussels (Haag 2012, p. 106). Optimal substrate conditions for the Suwannee moccasinshell include consolidated sand or sand and gravel mixtures, without excessive accumulations of sediment or detritus, and that remain stable during high flows. These substrates are dependent on geomorphically stable stream channels and intact riparian areas (Allan *et al.* 1997, p. 149; Rosgen 1996, pp. 8–11). Stable stream channels consistently transport their sediment load, such that the stream bed neither degrades nor aggrades, and have lower suspended sediment loads (Rosgen 1996, pp. 1–3), which mussels require in order to efficiently feed, respire, and reproduce. Stable stream channels are formed and maintained by natural flow regimes, channel features (dimension,

pattern, and profile), and natural sediment input to the system through periodic flooding, which maintains connectivity and interaction with the floodplain. Habitat instability is induced by changes in natural sediment or flow regimes, and by physical modifications to the stream channel or floodplain (channel instability is discussed further under *Factor A* of the final listing rule).

#### *Summary of Essential Physical or Biological Features*

We have determined that the following physical or biological features are essential to the conservation of Suwannee moccasinshell:

(1) Geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) Stable substrates of muddy sand or mixtures of sand and gravel, and with little to no accumulation of unconsolidated sediments and low amounts of filamentous algae.

(3) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found, and connectivity of stream channels with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability, and spawning habitat for native fishes.

(4) Water quality conditions needed to sustain healthy Suwannee moccasinshell populations, including low pollutant levels (not less than State criteria), a natural temperature regime, pH (between 6.0 to 8.5), adequate oxygen content (not less than State criteria), hardness, turbidity, and other chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(5) The presence of abundant fish hosts necessary for recruitment of the Suwannee moccasinshell. The presence of blackbanded darters (*Percina nigrofasciata*) and brown darters (*Etheostoma edwini*) will serve as an indication of fish host presence.

#### **Special Management Considerations or Protection**

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

All three units that we are designating as critical habitat, including the unit

that was occupied by the species at the time of listing, have mixed ownership of adjacent riparian lands, with mainly private (72 percent) and State (27 percent) lands (Table 1). All State-owned riparian lands are in Florida, and the majority are managed by Florida's Suwannee River Water Management District (District). Tracts are managed to maintain adequate water supply and water quality for natural systems by preserving riparian habitats and restricting development (SRWMD 2014, p. 3).

The District established minimum flows and levels for the lower Suwannee River, downstream of Fanning Springs and for the upper Santa Fe River. Minimum flow and level criteria establish a limit at which further withdrawals would be detrimental to water resources, taking into consideration fish and wildlife habitats, the passage of fish, sediment loads, and water quality, among others (SRWMD 2005, pp. 6–8; SRWMD 2007, entire). In addition, the Suwannee River and Santa Fe River systems have been designated Outstanding Florida Waters, which prevents the permitted discharge of pollutants that would lower existing water quality of, or significantly degrade, such waters. While these programs may indirectly alleviate some detrimental impacts on aquatic habitats, there currently are no plans or agreements designed specifically for the conservation of the Suwannee moccasinshell or for freshwater mussels in general.

The features essential to the conservation of the Suwannee moccasinshell may require special management considerations or protection to ameliorate the following threats: Altered flow regimes, nonpoint source pollution (from stormwater runoff or infiltration), point source pollution (from wastewater discharges or accidental releases), physical alterations to the stream channel (for example, dredging, straightening, impounding, etc.), and altered physical and chemical water quality parameters (especially, temperature, dissolved oxygen, turbidity, pH, and salinity). Special management considerations or protection may be required within critical habitat areas to ameliorate these threats, and include (but are not limited to): (1) Moderation of surface and ground water withdrawals; (2) improvement of the treatment of wastewater discharged from permitted facilities and the operation of those facilities; (3) reductions in pesticide and fertilizer use especially in groundwater recharge areas and near stream channels; (4) use of best management

practices designed to reduce sedimentation, erosion, and stream bank alteration; (5) protection and restoration of riparian buffers; and (6) avoidance of physical alterations to stream channels and adjacent floodplains. This list applies only to Federal actions (see the *Application of the "Adverse Modification" Standard* below for more information).

#### **Criteria Used To Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. As discussed in more detail below, we are designating critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are designating specific areas outside the geographical area occupied by the species at the time of listing because we have determined that a designation limited to occupied areas would be inadequate—and therefore designation of unoccupied areas is essential—to ensure the conservation of the species.

On December 16, 2020, we published a final rule in the **Federal Register** (85 FR 81411) adding a definition of "habitat" to our regulations for purposes of critical habitat designations under the Endangered Species Act of 1973, as amended (Act). This rule became effective on January 15, 2021 and only applies to critical habitat rules for which a proposed rule was published after January 15, 2021. Consequently, this new regulation does not apply to this final rule.

The current distribution of the species is much reduced from its historical range. We anticipate that recovery will require continued protection of the existing population and its habitat, as well as reintroduction of Suwannee moccasinshell into historically occupied areas, ensuring there are multiple viable populations and that they occur over a wide geographic area. Range-wide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating the critical habitat.



For this rule, we delineated critical habitat unit boundaries using the following criteria:

(1) We compiled all available occurrence data records.

(2) We used confirmed presences between the years 2000 and 2016 as the foundation for identifying areas currently occupied.

(3) We evaluated habitat suitability of stream segments currently occupied by the species and retained all occupied stream segments.

(4) We evaluated unoccupied stream segments for suitability, connectivity, and expansion, and identified areas containing the components comprising the physical or biological features that may require special management considerations or protection.

(5) We omitted some unoccupied areas that are highly degraded and are not likely restorable (*e.g.*, insufficient flowing water, channel destabilized), and, therefore, are not considered essential for the conservation of the species.

(6) We delineated boundaries of critical habitat units based on the above information.

Specific criteria and methodology used to determine critical habitat unit boundaries are discussed below.

Sources of data for this critical habitat designation include multiple databases maintained by Florida Fish and Wildlife Conservation Commission, Dr. James D. Williams, Florida Museum of Natural History, and U.S. Geological Survey; verified museum records from multiple institutions (see *Methods* in Johnson *et al.* 2016, pp. 164–165); and a status report by Blalock–Herod and Williams (2001, entire). Historical and recent occurrence data included records collected from May 1916 to March 2016. Many surveys were conducted throughout the Suwannee River basin by Florida Fish and Wildlife Conservation Commission biologists during 2012–2016, and all sites with historical occurrences of Suwannee moccasinshell were sampled during this period. Sources of information pertaining to habitat requirements of the Suwannee moccasinshell include observations recorded during surveys and information contained in Blalock–Herod and Williams (2001, entire) and Williams *et al.* (2014, pp. 278–280).

#### *Areas Occupied at the Time of Listing*

We define “currently occupied” as river reaches with positive surveys from 2000 to 2016. In making these determinations, we recognized that known occurrences for some mussel species are extremely localized, and rare mussels can be difficult to locate. In

addition, stream habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, we considered the entire reach between the uppermost and lowermost currently occupied locations to delineate the probable upstream and downstream extent of the Suwannee moccasinshell’s distribution. Within the current range of the species, some habitats may or may not be actively utilized by individuals, but we consider these areas to be occupied at the scale of the geographic range of the species.

We are designating as critical habitat for the Suwannee moccasinshell one occupied unit in the Suwannee River and lower Santa Fe River. This area contains one or more of the physical or biological features essential to the conservation of the Suwannee moccasinshell, and those physical or biological features may require special management conditions or protections. However, this single population provides little redundancy for the species, and a series of back-to-back stochastic events or a single catastrophic event could significantly reduce or extirpate this one population. Consequently, we have determined that the occupied area is inadequate to ensure the conservation of the species. Therefore, we have also identified, and are designating as critical habitat, unoccupied areas that are essential for the conservation of the species.

#### *Areas Not Occupied at the Time of Listing*

We are designating two unoccupied units as critical habitat. The units have some of the physical or biological features essential to the conservation of the species, and we are reasonably certain that each will contribute to the conservation of the species. Our specific rationale for each unit can be found in the unit descriptions below.

An examination of all available collection data shows that the Suwannee moccasinshell’s range and numbers have declined over time (see “Distribution and Abundance” discussion in the final listing rule). For example, despite considerable survey effort, the species has not been collected in the lower Suwannee River or Withlacoochee River sub-basins since the 1960s, and was last collected in the upper Santa Fe River sub-basin in 1996 (Johnson *et al.* 2016, p. 170). There has also been a reduction in numbers, with fewer individuals encountered during recent surveys than were collected historically (Johnson *et al.* 2016, pp. 166, 170).

The Suwannee moccasinshell’s reduced range and small population size may increase its vulnerability to many threats. Aquatic species with small ranges, few populations, and small or declining population sizes are the most vulnerable to extinction (Primack 2008, p. 137; Haag 2012, p. 336). The effects of certain environmental pressures, particularly habitat degradation and loss, catastrophic weather events, and introduced species, are greater when population size is small (Soulé 1980, pp. 33, 71; Primack 2008, pp. 133–137, 152). Threats to the Suwannee moccasinshell are compounded by its reduced and linear distribution, with nearly the entire population presently distributed within the Suwannee River mainstem. A small population also occurs in the lower Santa Fe River; however, only 5 recent collections (3 of which are relic shell) have been reported in this sub-basin (Johnson *et al.* 2016, p. 171).

A larger population of Suwannee moccasinshell occurring over a wide geographic area can have higher resilience. A large population is better able to return to pre-disturbance numbers after stochastic events, and also has increased availability of mates and reduced risk of genetic drift and inbreeding depression. The minimum viable population size needed to withstand stochastic events is not known for mussels. For species with complex life histories like freshwater mussels, maximizing the chances of viability over the long term, likely requires a population of considerable size (Haag 2012, p. 371). Reestablishing viable populations in the Withlacoochee and upper Santa Fe River sub-basins increases Suwannee moccasinshell redundancy by expanding its range into historically occupied areas, potentially increasing population size, and providing refuge from catastrophic events (for example, flooding and spills) in the Suwannee River.

We determined the Withlacoochee and upper Santa Fe River sub-basins have the potential for future reoccupation by the species, provided that stressors are managed and mitigated. These specific areas encompass the minimum area of the species’ historical range within the critical habitat designation, while still providing ecological diversity so that the species has the ability to evolve and adapt over time (representation) to ensure that the species has an adequate level of redundancy to guard against future catastrophic events. These areas also represent the stream reaches within the historical range with the best potential for recovery of the species due



to their current conditions and likely suitability for reintroductions. Accordingly, we are designating one unoccupied unit in the upper Santa Fe River and one unoccupied unit in the Withlacoochee River. As described below in the individual unit descriptions, each unit contains one or more of the physical or biological features and is reasonably certain to contribute to the conservation of the species.

*General Information on the Maps of the Critical Habitat Designation*

The critical habitat streams were mapped with USGS National Hydrography Dataset GIS data. The high-resolution 1:24,000 flowlines were used to delineate the upstream and downstream boundaries of the critical habitat units and to calculate river kilometers and miles, according to the criteria explained below. The downstream boundary of a unit is the confluence of a named tributary stream or spring, below the farthest downstream occurrence record. The upstream boundary is the confluence of the first major tributary, road-crossing bridge, or a permanent barrier to fish passage above the farthest upstream occurrence record. The confluence of a large tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream terminus. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels may disperse via their fish hosts. In the unit descriptions, distances between landmarks marking the upstream or

downstream extent of a stream segment are given in river kilometers (km) and equivalent miles (mi), as measured tracing the course of the stream, not straight-line distance.

The areas designated as critical habitat include only stream channels within the ordinary high-water line. States were granted ownership of lands beneath navigable waters up to the ordinary high-water line upon achieving statehood (*Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high-water mark of some navigable waters that are included in this rule. Most, if not all, lands beneath the navigable waters included in this final rule are owned by the States of Florida and Georgia. The lands beneath most non-navigable waters included in this final rule are in private ownership.

There are no developed areas within the critical habitat boundaries except for transportation crossings, which do not remove the suitability of these areas for this species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification

unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by these maps, as modified by any accompanying regulatory text, presented at the end of this document in the text of the rule itself. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. The coordinates on which each map is based are available at the Service's internet site, (<https://www.fws.gov/panamacity>), (<http://www.regulations.gov>) at Docket No. FWS-R4-ES-2019-0059, and at the field office responsible for this designation (see **FOR FURTHER INFORMATION CONTACT** above).

**Final Critical Habitat Designation**

We are designating approximately 306 km (190 mi) of stream channel in three units as critical habitat for the Suwannee moccasinshell. The three units we are designating as critical habitat are: Unit 1: Suwannee River, Unit 2: Upper Santa Fe River, and Unit 3: Withlacoochee River. About 81 percent of critical habitat for the Suwannee moccasinshell is already designated as critical habitat for either of two ESA-listed species: The oval pigtoe (*Pleurobema pyriforme*) or the Gulf sturgeon (*Acipenser oxyrinchus desotoi*). The table below shows the critical habitat units for the Suwannee moccasinshell and ownership of riparian lands adjacent to the units.

**TABLE OF CRITICAL HABITAT UNITS FOR THE SUWANNEE MOCCASINSHELL**

[Ownership of riparian lands adjacent to the units is given for each streambank in kilometers (km) and miles (mi). Lengths greater than 10 kilometers are rounded to the nearest whole kilometer and mile.]

Bank	Private km (mi)	State km (mi)	County km (mi)	Unit length km (mi)
Unit 1: Suwannee River, FL				187 (116.2)
Right descending bank *	133 (83)	51 (31)	3.1 (1.9)	
Left descending bank *	133 (83)	53 (33)	1.5 (0.9)	
<i>Total</i>	<i>266 (165)</i>	<i>103 (64)</i>	<i>4.6 (2.9)</i>	
Unit 2: Upper Santa Fe River, FL				43 (26.7)
Right descending bank	34 (21)	8.4 (5.2)	0.4 (0.3)	
Left descending bank	26 (16)	13 (8)	3.6 (2.2)	
<i>Total</i>	<i>61 (38)</i>	<i>22 (13)</i>	<i>4 (2.5)</i>	
Unit 3: Withlacoochee River, FL and GA				75.5 (46.9)
Right descending bank	58 (36)	17 (11)	0	
Left descending bank	53 (33)	22 (14)	0	
<i>Total</i>	<i>112 (69)</i>	<i>39 (25)</i>	<i>0</i>	

**Note:** Totals may not sum due to rounding.

\* Right and left descending bank is that bank of a stream when facing in the direction of flow or downstream.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Suwannee moccasinshell, below.

#### *Unit 1: Suwannee River, Florida*

Unit 1 consists of approximately 187 km (116 mi) of the Suwannee River and lower Santa Fe River in Alachua, Columbia, Dixie, Gilchrist, Lafayette, Madison, and Suwannee Counties, Florida. The unit includes the Suwannee River mainstem from the confluence of Hart Springs (near river kilometer 71) in Dixie and Gilchrist Counties, upstream 137 km (85 mi) to the confluence of the Withlacoochee River in Madison and Suwannee Counties; and the Santa Fe River from its confluence with the Suwannee River in Suwannee and Gilchrist Counties, upstream 50 km (31 mi) to the river's rise in Alachua County. The Santa Fe River flows underground for about 5 km (3.1 mi), "sinking" at O'Leno State Park and "rising" at River Riser Preserve State Park. The lower and upper portions of the Santa Fe River are intermittently connected during high flow events. The riparian lands along stream reaches in this unit are generally privately owned agricultural or silvicultural lands, or State-owned or -managed conservation lands (Table 1).

The Suwannee moccasinshell occupies all stream reaches in this unit, which contains most of the physical or biological features essential to the conservation of the Suwannee moccasinshell. However, decreases in stream flow and changes in water quality, especially increased nitrogen loads and algae growth, are recognized issues in all stream reaches within the unit (SRWMD 2017, pp. 26–27, 42–50). During drought, depressed dissolved oxygen levels and elevated water temperatures may also be degraded in some reaches. Therefore, physical or biological features 3 and 4 are not consistently present in the unit. Currently, 73 percent of Unit 1 is designated critical habitat for the Gulf sturgeon (a migratory fish). Some small urban areas also are located near the two rivers.

Special management considerations and protections that may be required to address threats within the unit include: Minimizing ground and surface water withdrawals or other actions that alter stream hydrology; reducing the use of fertilizers and pesticides, especially in spring recharge areas and near stream channels; improving treatment of wastewater discharged from permitted facilities and the operation of those facilities; implementing practices that protect or restore riparian buffer areas

along stream corridors; avoidance of physical alterations to the stream channel and floodplain; prohibiting the removal of pre-cut submerged timber (deadhead logs); and establishing and enforcing restrictions on boat speed and length, especially in the lower Santa Fe River. Many of these measures would also be implemented in stream reaches upstream of the unit to adequately protect habitat within the unit. For example, a large surface mining project is proposed adjacent the New River within the upper Santa Fe River watershed. If the mining operation and its associated structures are constructed as currently proposed, we anticipate that physical or biological features 3 and 4 would be negatively impacted to a significant degree within the unit. In addition, groundwater discharge via springs is important to maintaining flows and water quality needed by the species, especially during drought (Holcomb *et al.*, 2018, p. 95). Therefore, spring recharge areas and aquifers may also need to be protected in order to fully address threats within the unit.

#### *Unit 2: Upper Santa Fe River, Florida*

Unit 2 consists of approximately 43 km (27 mi) of the Santa Fe River and New River in Alachua, Bradford, Columbia, and Union Counties, Florida. The unit includes the Santa Fe River from the river's sink in Alachua County, upstream 36.5 km (23 mi) to the confluence of Rocky Creek in Bradford and Alachua Counties; and the New River from its confluence with the Santa Fe River, upstream 6.5 km (4 mi) to the confluence of Five Mile Creek in Union and Bradford Counties. The riparian lands along stream channels in this unit are generally privately owned agricultural or silvicultural lands, or are State-owned or -managed conservation lands (Table 1). All of Unit 2 is also designated critical habitat for the oval pigtoe (a freshwater mussel). The Suwannee moccasinshell was routinely represented in historical collections in the upper Santa Fe sub-basin; however, it is the only mussel species not detected in contemporary surveys. Unit 2 retains the features of a natural stream channel and presently supports a diverse mussel fauna, including several mussel species known to co-occur with the Suwannee moccasinshell. This unit has at least one of the physical or biological features essential to the conservation of the species, and we are reasonably certain that this area will contribute to the conservation of the species. Our specific rationale for this unit can be found below.

This area is essential for the conservation of the species because it

would improve its resiliency and redundancy of the species, which is necessary to conserve and recover the Suwannee moccasinshell. To improve the species' overall viability by increasing resiliency and redundancy, it is important to reestablish Suwannee moccasinshell populations in its former range in the Santa Fe River sub-basin (*i.e.*, Unit 2). Presently, nearly the entire population of the species is linearly distributed within the Suwannee River and vulnerable to catastrophic events (for example, contaminant spills or severe floods), as well as to random fluctuations in population size or environmental conditions (Haag and Williams 2014, p. 48). Therefore, reestablishing populations in Unit 2 would reduce its extinction risk by expanding its current range into areas beyond the mainstem by providing connectivity to already occupied areas, space for growth and population expansion in portions of historical habitat, and refugia areas from threats in the Suwannee River.

Although it is considered unoccupied, portions of this unit contain some or all of the physical or biological features essential for the conservation of the species. Unit 2 possesses characteristics described by physical or biological features 1 and 2 as long reaches of stable stream channel and suitable substrates are present throughout much of the unit. Unit 2 retains the features of a natural stream channel and presently supports a diverse mussel fauna, including several mussel species that ordinarily co-occur with the Suwannee moccasinshell. Both fish species found to serve as larval hosts for the Suwannee moccasinshell occur within the unit (Robins *et al.*, 2018, pp. 317, 336). Physical or biological features 3 and 4 are degraded in the Unit during some times of the year. Flow levels in the upper Santa Fe River have declined over time, and the river has ceased to flow multiple times since 2000 (Johnson *et al.*, 2016, p. 170). An important effect of reduced flows is altered water quality, especially depressed dissolved oxygen levels and elevated water temperatures (discussed above under "Physical or Biological Features"). In 2007, the District developed minimum flow levels to establish flows protective of "fish and wildlife habitats and the passage of fish" in the upper Santa Fe River (SRWMD 2007, entire). The restoration of natural flow levels is a complex issue that will require considerable involvement and collaboration of Federal, State, and local governments and private landowners to implement projects that reduce groundwater

pumping in order to recover aquifer levels and sustain base flows in the upper Santa Fe River sub-basin. However, if implemented, water management strategies would improve physical or biological features 3 and 4. The need for conservation efforts is recognized by our conservation partners, and methods for restoring natural flow regimes and reintroducing the species into unoccupied habitat are being advocated and developed. Accordingly, we are reasonably certain this unit will contribute to the conservation of the species.

*Unit 3: Withlacoochee River, Georgia and Florida*

Unit 3 consists of approximately 75.5 km (47 mi) of the Withlacoochee River in Madison and Hamilton Counties, Florida, and Brooks and Lowndes Counties, Georgia. The unit includes the Withlacoochee River from its confluence with the Suwannee River in Madison and Hamilton Counties, FL, upstream 75.5 km (47 mi) to the confluence of Okapilco Creek in Brooks and Lowndes Counties, GA. The riparian lands along stream channels in this unit are generally privately owned agricultural or silvicultural lands (Table 1). Unit 3 is within the historical range of the Suwannee moccasinshell but is not currently occupied by the species. Twenty-five percent of Unit 3 is also designated critical habitat for the Gulf sturgeon. Unit 3 retains the features of a natural stream channel and supports a diverse mussel fauna, including several mussel species known to co-occur with the Suwannee moccasinshell. This unit has at least one of the physical or biological features essential to the conservation of the species and we are reasonably certain that this area will contribute to the conservation of the species. Our specific rationale for this unit can be found below.

This area is essential for the conservation of the species because it would improve the resiliency and redundancy of the species, which is necessary to conserve and recover the Suwannee moccasinshell. Presently, nearly the entire population of the species is linearly distributed within the Suwannee River (see Unit 1 above) and vulnerable to catastrophic events (for example, contaminant spills or severe floods) as well as to random fluctuations in population size or environmental conditions (Haag and Williams 2014, p. 48). Reestablishing populations in Withlacoochee River sub-basin would reduce its extinction risk by expanding its current range into areas beyond the mainstem by providing connectivity to

already occupied areas, space for growth and population expansion in portions of historical habitat, and refugia areas from threats in the Suwannee River.

Although it is considered unoccupied, portions of this unit contain some or all of the physical or biological features essential for the conservation of the species. Specifically, Unit 3 possesses characteristics described by physical or biological features 1 and 2 as long reaches of stable stream channel with suitable substrates are present within the unit. Unit 3 retains the features of a natural stream channel and supports a diverse mussel fauna, including several mussel species that ordinarily co-occur with the Suwannee moccasinshell. Both fish species found to serve as larval hosts for the Suwannee moccasinshell occur within the unit (Robins et al. 2018, pp. 317, 336). Therefore, we find that the unit has the potential to support the species' life-history functions.

Physical or biological feature 4 is in degraded condition, and pollution may have contributed to the Suwannee moccasinshell's decline in Unit 3. The domestic wastewater treatment plant for the city of Valdosta, GA is approximately 14 river miles upstream of the unit and has a history of untreated sewage releases to the Withlacoochee River after heavy rain events. However, major renovations to the city's sewer system were completed in June 2016 with the construction of a new treatment plant. Additional projects to address continued problems with sewage spills are ongoing, and the construction of a large retention basin is planned. If these improvements are realized, water quality could be restored to levels necessary to support the species.

The need for conservation efforts is recognized by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being developed. The Florida Fish and Wildlife Conservation Commission and Georgia Department of Natural Resources have expressed support for including this area in a critical habitat designation (Florida Fish and Wildlife Conservation Commission 2019; Georgia Department of Natural Resources 2018). Accordingly, we are reasonably certain this unit will contribute to the conservation of the species.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund,

authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species listed under the Act or result in the destruction or adverse modification of critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on August 27, 2019 (84 FR 45020). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR

402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinstatement of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Overall, about 81 percent of critical habitat proposed for the Suwannee moccasinshell is already designated as critical habitat for either the oval pigtoe or Gulf sturgeon. For Federal actions within areas already designated as critical habitat for these species, conservation measures we would recommend for the Suwannee moccasinshell are likely to be the same or very similar to those we already recommend for the oval pigtoe and Gulf sturgeon. New additional conservation measures will, however, likely be needed within that portion of Unit 3 that is unoccupied by the Suwannee moccasinshell but not currently designated critical habitat for the Gulf sturgeon.

#### *Application of the "Destruction or Adverse Modification" Standard*

The key factor related to the destruction or adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat

would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of the Suwannee moccasinshell. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Suwannee moccasinshell. These activities include, but are not limited to:

(1) Actions that would introduce contaminants or alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemical or biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water quality conditions to levels that are beyond the tolerances of the mussel or its fish host.

(2) Actions that would reduce flow levels or alter flow regimes. This could include, but is not limited to, activities that lower groundwater levels including groundwater pumping and surface water withdrawal or diversion. These activities can result in long-term reduced stream flows, which may cause streams to stop flowing or dry up; and also may decrease oxygen levels, elevate water temperatures, degrade water quality, and cause sediments to accumulate. These activities could alter flow levels beyond the tolerances of the mussel or its fish host.

(3) Actions that would significantly increase the filamentous algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities can result in excessive filamentous algae filling streams and reducing habitat for the mussel and its fish host, degrading water quality during their decay, and decreasing oxygen levels at night from their

respiration. Thick algal mats can also entrain young mussels and prevent juveniles from settling into the sediment. These activities could degrade the habitat and reduce oxygen levels below the tolerances of the mussel or its fish host.

(4) Actions that would significantly alter channel morphology or cause channel instability. Such activities could include but are not limited to channelization, impoundment, road and bridge construction, mining, dredging, destruction of riparian vegetation, and land clearing. These activities may lead to changes in flow regimes, erosion of the streambed and banks, and excessive sedimentation that could degrade the habitat of the mussel or its fish host.

(5) Actions that would cause significant amounts of sediments to enter the stream channel. Such activities could include but are not limited to livestock grazing, road and bridge construction, channel alteration, incompatible with best management practices, commercial and residential development, and other watershed and floodplain disturbances. These activities could eliminate or degrade the habitat necessary for the growth and reproduction of the mussel or its fish host.

#### **Exemptions**

##### *Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense (DoD) lands with a completed INRMP within the final critical habitat designation.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the

benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations pertaining to exclusions of critical habitat. These final regulations became effective on January 19, 2021 and apply to critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Suwannee moccasinshell, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Suwannee moccasinshell due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. Additionally, continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

#### *Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land

uses or activities for the benefit of the species and its habitat within the designated areas. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional section 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation (Industrial Economics 2020, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The

screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units unoccupied by the species may require additional management or conservation efforts as a result of the critical habitat designation, and thus may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitute our economic analysis of the critical habitat designation for the Suwannee moccasinshell and is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the Suwannee moccasinshell, first we identified, in the IEM dated June 30, 2016, probable incremental economic impacts associated with the following categories of activities: (1) Groundwater pumping; (2) agriculture; (3) mining; (4) grazing; (5) discharge of chemical pollutants; (6) roadway and bridge construction; (7) in-stream dams and diversions; (8) dredging; (9) commercial or residential development; (10) timber harvest; and (11) removal of large in-channel logs. We considered each industry or category individually. Additionally, we considered whether these activities would have any Federal involvement.

Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, the designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Suwannee moccasinshell is present, Federal

agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Suwannee moccasinshell's critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The physical or biological features identified for occupied critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Suwannee moccasinshell would also likely adversely affect the essential physical or biological features of occupied critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species.

The final critical habitat designation for the Suwannee moccasinshell totals approximately 306 kilometers (190 miles) of stream channels in three units. The riparian lands adjacent to critical habitat are under private (72 percent), State (27 percent), and county (1 percent) ownership. Unit 1 is the only occupied unit and is 61 percent of the critical habitat designation. As discussed above, in this occupied area, any actions that may affect the species or its habitat would also affect designated critical habitat and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Suwannee moccasinshell. Therefore, only administrative costs are expected in actions affecting this unit. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs, because they are predominantly administrative in nature, would not be significant.

Units 2 and 3 are currently unoccupied by the species but are essential for the conservation of the species. These units total 119 km (78

mi) and comprise 39 percent of the critical habitat designation. In these unoccupied areas, any conservation efforts or associated probable impacts would be considered incremental effects attributed to the critical habitat designation.

The screening analysis finds that the total annual incremental costs of critical habitat designation for the Suwannee moccasinshell are anticipated to be less than \$100,000 per year. The highest costs are anticipated in Unit 3 because it is unoccupied by the species and is not already designated critical habitat for another mussel species (for comparison, see discussion for Unit 2 below). In this unit, the designation is anticipated to result in a small number of additional section 7 consultations (approximately three per year), primarily related to planned transportation projects that intersect the unit. Anticipated project modifications may include minimizing the extent of in-channel maintenance activities, relocation of discharge outfalls, or requiring strict adherence of water quality and habitat protections. Total annual costs to the Service and action agencies for consultations and project modifications in Unit 3 are anticipated to be less than \$80,000 annually (Industrial Economics 2020, pp. 9–12).

In Units 1 and 2, the economic costs of implementing the rule will most likely be limited to additional administrative efforts by the Service and action agencies to consider adverse modification. Unit 1 is occupied by the Suwannee moccasinshell, and conservation actions taken in order to be protective of the species would also be sufficient to protect its critical habitat. Unit 2 is also designated as critical habitat for the oval pigtoe, a freshwater mussel with nearly identical physical or biological features to the Suwannee moccasinshell. Conservation efforts taken to protect oval pigtoe critical habitat would also be sufficient to protect Suwannee moccasinshell critical habitat. Thus, additional project modifications are not anticipated in Units 1 and 2. In total, up to six section 7 consultations per year are anticipated to occur in Units 1 and 2, with total costs of less than \$20,000 annually (Industrial Economics 2020, pp. 7–9).

#### Exclusions

##### *Exclusions Based on Economic Impacts*

We solicited data and comments from the public regarding the economic analysis, as well as all aspects of the proposed rule. We did not receive any additional information on economic impacts during the public comment

period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Based on the above-described consideration of the economic impacts of the critical habitat designation, the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the Suwannee moccasinshell based on economic impacts.

A copy of the IEM and economic screening analysis with supporting documents may be obtained by contacting the Panama City Ecological Services Field Office or from the field office's website (see **ADDRESSES**).

##### *Exclusions Based on Impacts to National Security and Homeland Security*

In preparing this rule, we determined that none of the lands within the designated critical habitat for the Suwannee moccasinshell are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

##### *Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we considered any other relevant impacts, in addition to economic impacts and impacts on national security. We considered a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we looked at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also considered any social impacts that might occur because of the designation.

In preparing this final rule, we determined that there are currently no HCPs or other management plans for the Suwannee moccasinshell, and the final designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this final critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

### Required Determinations

#### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act* (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small

organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated

with the critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that the critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

#### *Energy Supply, Distribution, or Use—* *Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act* (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7)." Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement



authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small

Government Agency Plan is not required.

#### *Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Suwannee moccasinshell in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Suwannee moccasinshell does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or

biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

#### *Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the species. The areas of designated critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with



designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that

Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands would be affected by the designation.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this rulemaking are staff of the Panama City Ecological Services Field Office.

**Signing Authority**

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this

document on June 23, 2021, for publication.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11 in paragraph (h) by revising the entry for “Moccasinshell, Suwannee” under “Clams” in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* CLAMS	*	*	*	* * *
* Moccasinshell, Suwannee	* <i>Medionidus walkeri</i> .....	* Wherever found .....	* T	* 81 FR 69417, 10/6/2016; 50 CFR 17.95(f). <sup>CH</sup>
*	*	*	*	* * *

■ 3. Amend § 17.95 in paragraph (f) by adding an entry for “Suwannee Moccasinshell (*Medionidus walkeri*)” immediately after the entry for “Fluted Kidneyshell (*Ptychobranthus subtentum*)” to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*  
(f) \* \* \*

**Suwannee Moccasinshell (*Medionidus walkeri*)**

(1) Critical habitat units are depicted on the maps in this entry for Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Madison, Suwannee, and Union Counties, Florida; and Brooks and Lowndes Counties, Georgia.

(2) Within these areas, the physical or biological features essential to the conservation of Suwannee

moccasinshell consist of the following components:

(i) Geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) Stable substrates of muddy sand or mixtures of sand and gravel, and with little to no accumulation of unconsolidated sediments and low amounts of filamentous algae.

(iii) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found, and connectivity of stream channels with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability, and spawning habitat for native fishes.

(iv) Water quality conditions needed to sustain healthy Suwannee moccasinshell populations, including low pollutant levels (not less than State criteria), a natural temperature regime, pH (between 6.0 to 8.5), adequate oxygen content (not less than State criteria), hardness, turbidity, and other chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(v) The presence of fish hosts necessary for recruitment of the Suwannee moccasinshell. The presence of blackbanded darters (*Percina nigrofasciata*) and brown darters (*Etheostoma edwini*) will serve as an indication of fish host presence.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, dams, roads, and other paved areas) and the land on which they

are located existing within the legal boundaries on August 2, 2021.

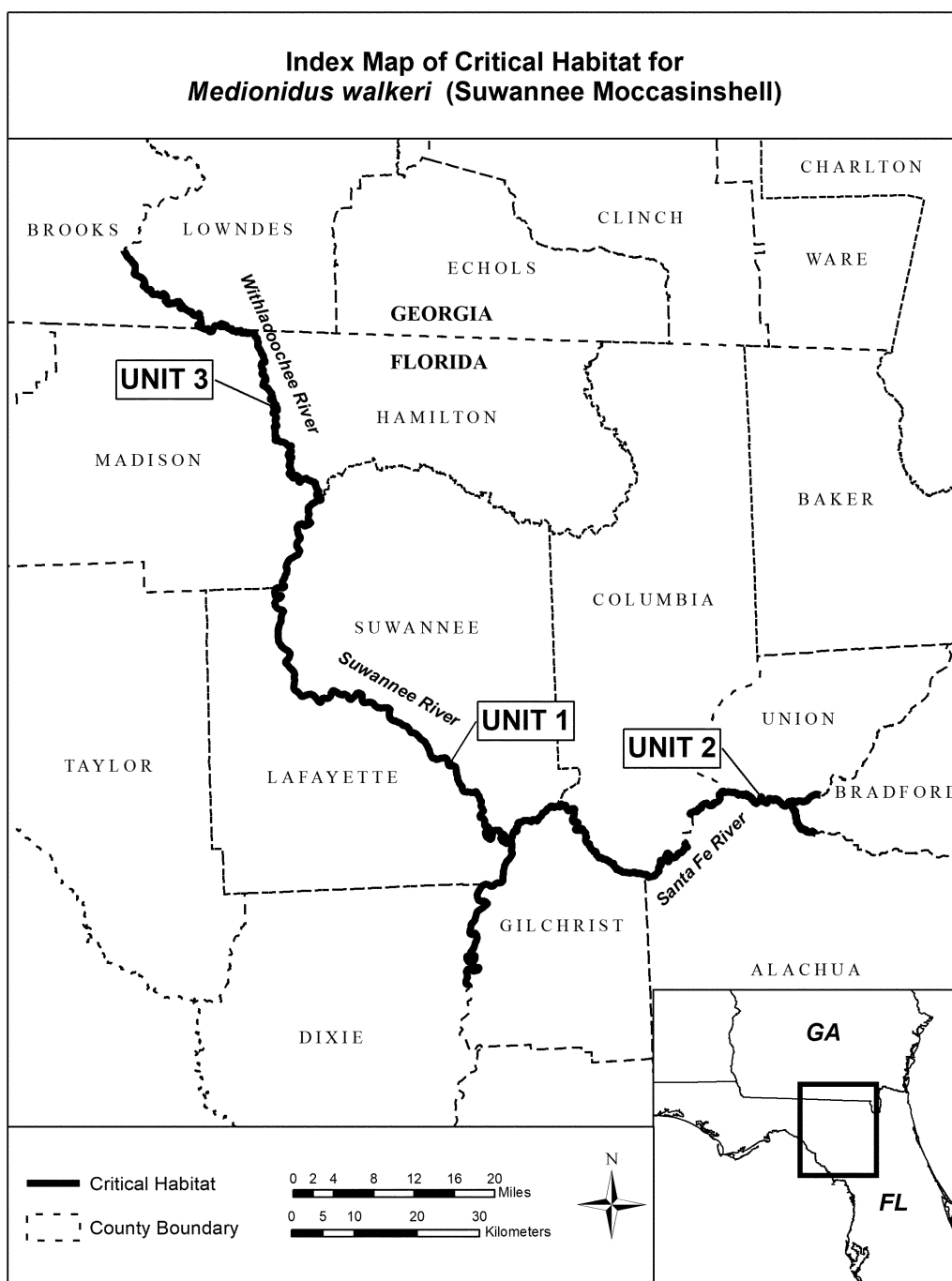
(4) Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset GIS data. The high-resolution 1:24,000 flowlines were used to calculate river kilometers and miles. ESRI's ArcGIS 10.2.2 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in

mapping all units was Universal Transverse Mercator, NAD 83, Zone 16 North. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates on which each map is based are available at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2019-0059, the Service's internet site (<https://www.fws.gov/>

*panamacity*), and at the field office responsible for this designation. You may obtain field office location by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map of critical habitat units for the Suwannee moccasinshell in Florida and Georgia follows:

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(6) Unit 1: Suwannee River in Alachua, Columbia, Dixie, Gilchrist,

Lafayette, Madison, and Suwannee Counties, Florida.

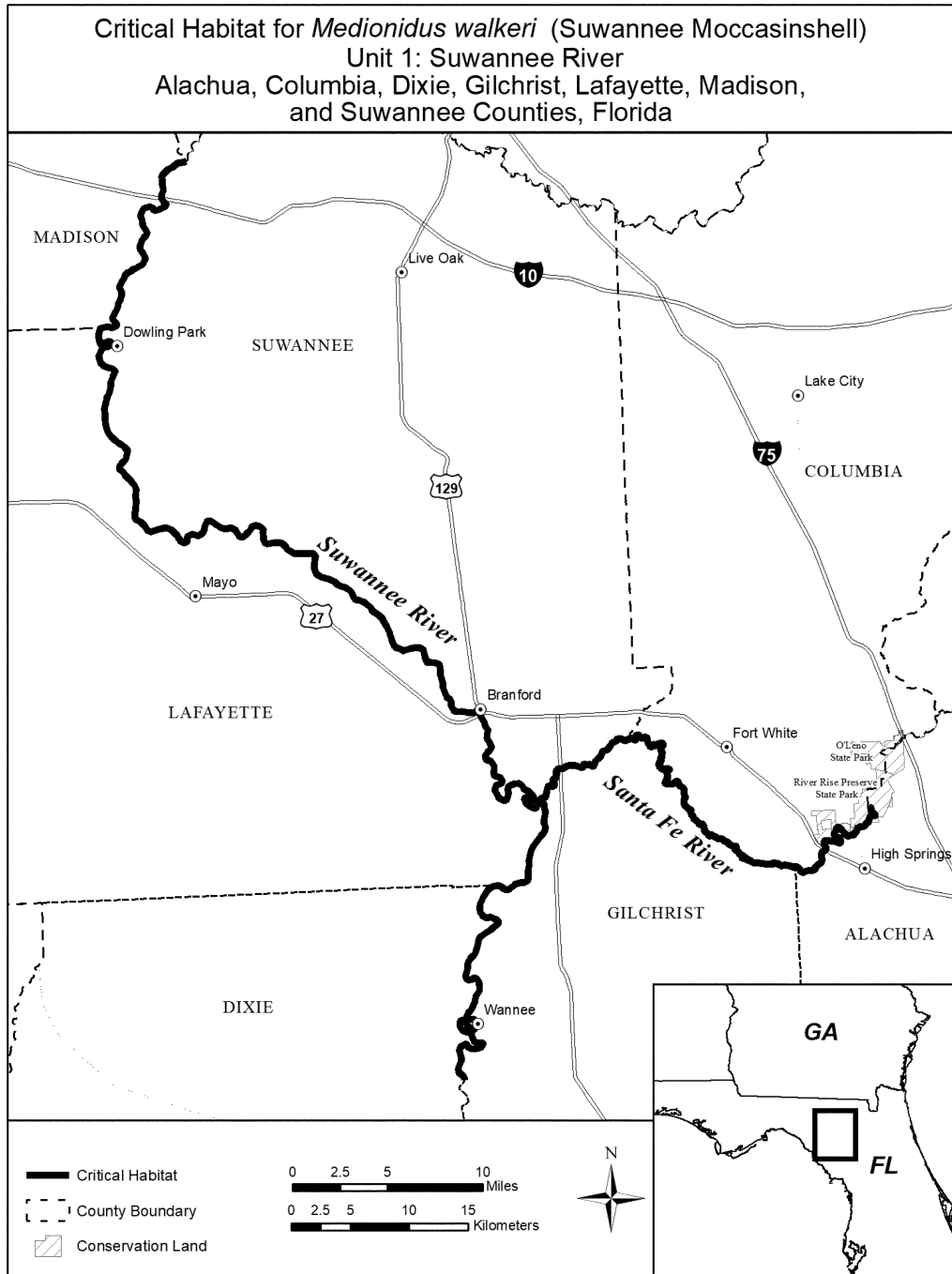
(i) Unit 1 consists of approximately 187 kilometers (km) (116 miles (mi)) of

the Suwannee River and lower Santa Fe River in Alachua, Columbia, Dixie, Gilchrist, Lafayette, Madison, and Suwannee Counties, Florida. The unit includes the Suwannee River mainstem from the confluence of Hart Springs in Dixie and Gilchrist Counties, upstream

137 km (85 mi) to the confluence of the Withlacoochee River in Madison and Suwannee Counties; and the Santa Fe River from its confluence with the Suwannee River in Suwannee and Gilchrist Counties, upstream 50 km (31 mi) to the river's rise (the Santa Fe River

runs underground for more than 3 miles, emerging at River Rise Preserve State Park) in Alachua County.

(ii) Map of Unit 1, Suwannee River, follows:



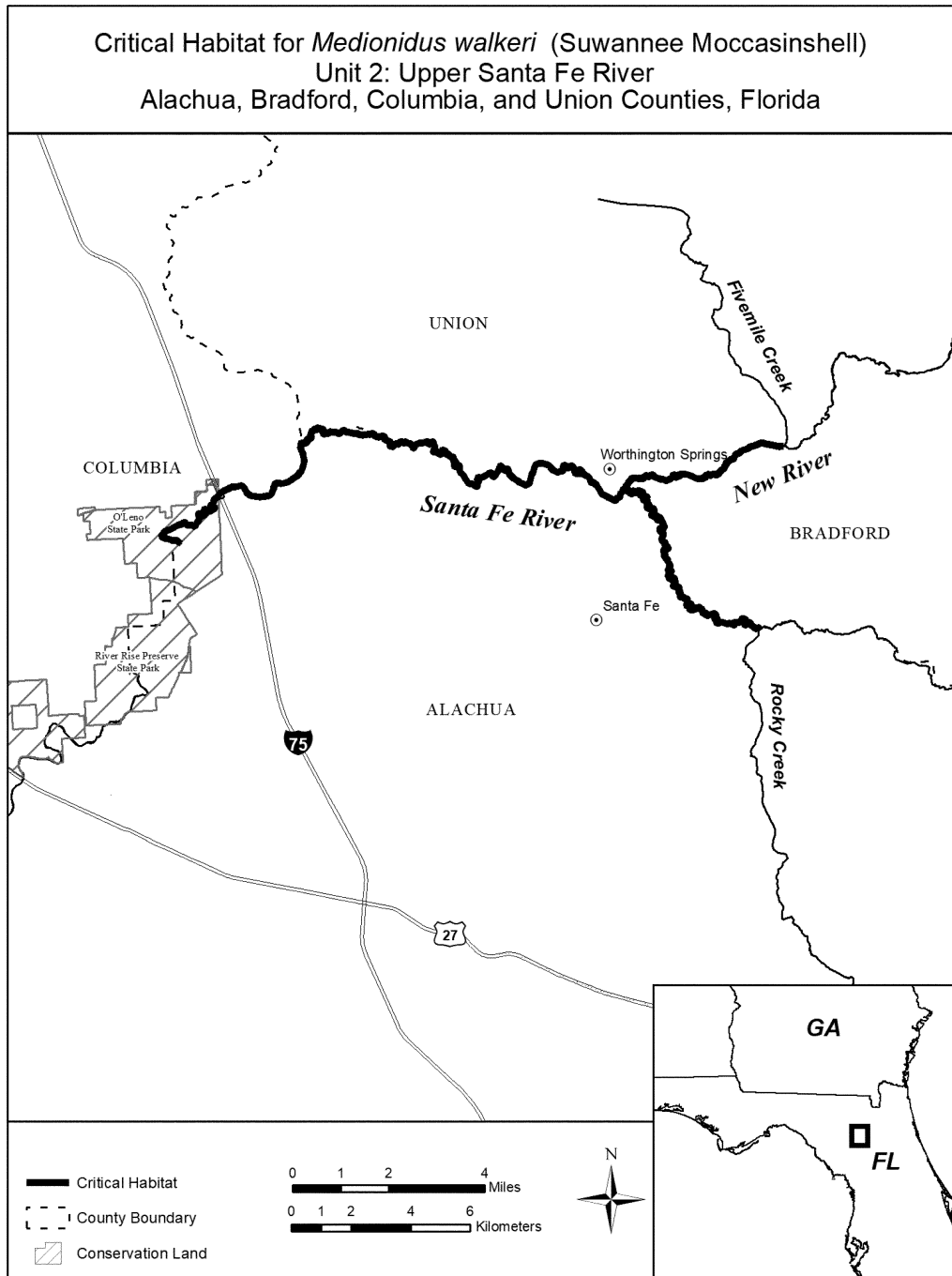
(7) Unit 2: Upper Santa Fe River in Alachua, Bradford, Columbia, and Union, Counties, Florida.

(i) The Upper Santa Fe River Unit consists of approximately 43 km (27 mi) of the Santa Fe River and New River in

Alachua, Bradford, Columbia, and Union Counties, Florida. The unit includes the Santa Fe River from the river's sink in Alachua County, upstream 36.5 km (23 mi) to the confluence of Rocky Creek in Bradford

and Alachua Counties; and the New River from its confluence with the Santa Fe River, upstream 6.5 km (4 mi) to the confluence of Five Mile Creek in Union and Bradford Counties.

(ii) Map of Unit 2, Upper Santa Fe River, follows:



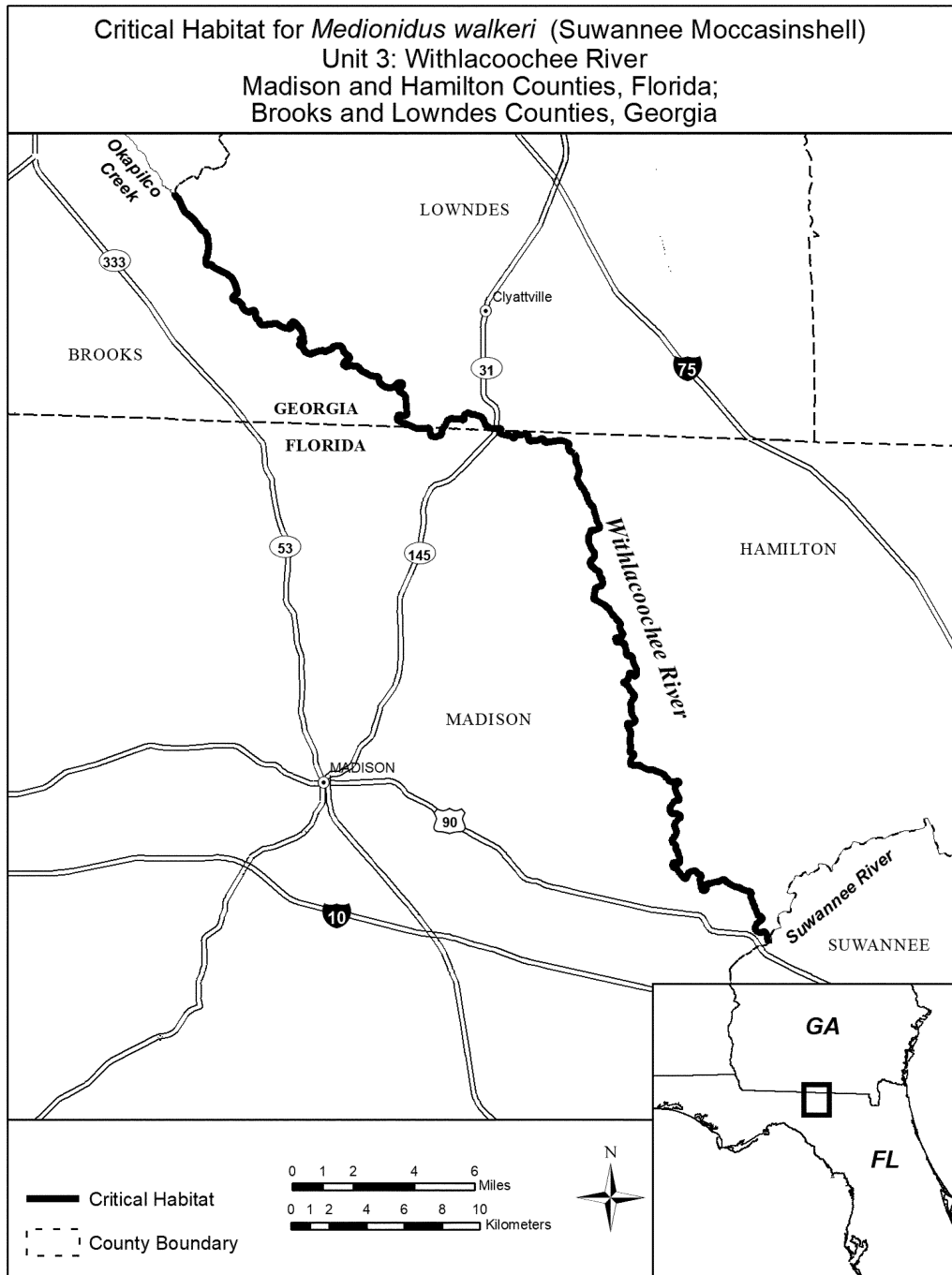
(8) Unit 3: Withlacoochee River in Hamilton and Madison Counties, Florida; Brooks and Lowndes Counties, Georgia.

(i) The Withlacoochee River Unit consists of approximately 75.5 km (47 mi) of the Withlacoochee River in

Hamilton and Madison Counties, Florida, and Brooks and Lowndes Counties, Georgia. The unit includes the Withlacoochee River from its confluence with the Suwannee River in Madison and Hamilton Counties, FL, upstream 75.5 km (47 mi) to the

confluence of Okapilco Creek in Brooks and Lowndes Counties, GA.

(ii) Map of Unit 3, Withlacoochee River, follows:



\* \* \* \* \*

**Anissa Craghead,**  
*Acting Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.*

[FR Doc. 2021-13800 Filed 6-30-21; 8:45 am]

**BILLING CODE 4333-15-C**

# Proposed Rules

Federal Register

Vol. 86, No. 124

Thursday, July 1, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

[NRC-2017-0029]

RIN 3150-AJ98

### NuScale Small Modular Reactor Design Certification

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to certify the NuScale standard design for a small modular reactor. Applicants or licensees intending to construct and operate a NuScale standard design may do so by referencing this design certification rule. The applicant for certification of the NuScale standard design is NuScale Power, LLC. The public is invited to submit comments on this proposed rule.

**DATES:** Submit comments by August 30, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0029. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply

confirming receipt, then contact us at 301-415-1677.

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

#### FOR FURTHER INFORMATION CONTACT:

Yanely Malave, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1519, email: [Yanely.Malave@nrc.gov](mailto:Yanely.Malave@nrc.gov), and Prosanta Chowdhury, Office of Nuclear Reactor Regulation, telephone: 301-415-1647, email: [Prosanta.Chowdhury@nrc.gov](mailto:Prosanta.Chowdhury@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

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#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0029 when contacting the NRC about

the availability of information for this proposed rule. You may obtain publicly available information related to this proposed rule by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0029.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS accession number for each document referenced in this proposed rule (if that document is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section XV, “Availability of Documents,” of this document.

- *Attention:* The Public Document Room (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](mailto:PDR.Resource@nrc.gov) or by calling 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *Attention:* The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at [Library.Resource@nrc.gov](mailto:Library.Resource@nrc.gov) between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

##### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0029 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly

disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov>

as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

## II. Background

Part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), “Licenses, Certifications, and Approvals for Nuclear Power Plants,” subpart B, “Standard Design Certifications,” presents the process for obtaining standard design certifications. By letter dated December 31, 2016, NuScale Power, LLC, (NuScale Power) filed its application for certification of the NuScale standard design (hereafter referred to as NuScale) (ADAMS Accession No. ML17013A229). The NRC published a notification of receipt of the design certification application (DCA) in the **Federal Register** on February 22, 2017 (82 FR 11372). On March 30, 2017, the NRC published a notification of acceptance for docketing of the application in the **Federal Register** (82 FR 15717) and assigned docket number 52–048. The preapplication information submitted before the NRC formally accepted the application can be found in ADAMS under Docket No. PROJ0769.

NuScale is the first small modular reactor design reviewed by the NRC. NuScale is based on a small light water reactor developed at Oregon State University in the early 2000s. It consists of one or more NuScale power modules (hereafter referred to as power module(s)). A power module is a natural circulation light water reactor composed of a reactor core, a pressurizer, and two helical coil steam generators located in a common reactor pressure vessel that is housed in a compact cylindrical steel containment. The NuScale reactor building is designed to hold up to 12 power modules. Each power module has a rated thermal output of 160 megawatt thermal (MWt) and electrical output of 50 megawatt electric (MWe), yielding a total capacity of 600 MWe for 12 power

modules. All NuScale power modules are partially submerged in one safety-related pool, which is also the ultimate heat sink for the reactor. The pool portion of the reactor building is located below grade. The design utilizes several first-of-a-kind approaches for accomplishing key safety functions, resulting in no need for Class 1E safety-related power (no emergency diesel generators), no need for pumps to inject water into the core for post-accident coolant injection, and reduced need for control room staffing while providing safe operation of the plant during normal and post-accident operation.

## III. Regulatory and Policy Issues

### A. Control Room Staffing Requirements

The requirements in § 50.54(k) and § 50.54(m) identify the minimum number of licensed operators that must be on site, in the control room, and at the controls. The requirements are conditions in every nuclear power reactor operating license issued under 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities.” The requirements also are conditions in every combined license (COL) issued under 10 CFR part 52; however, they are applicable only after the Commission makes the finding under § 52.103(g) that the acceptance criteria in the COL are met.

In a letter to the NRC, dated September 15, 2015 (ADAMS Accession No. ML15258A846), NuScale Power proposed that 6 licensed operators would operate up to 12 power modules from a single control room. The staffing proposal would meet the requirements of § 50.54(k) but would not meet the requirements in § 50.54(m)(2)(i) because the minimum requirements for the onsite staffing table in § 50.54(m)(2)(i) do not address operation of more than two units from a single control room. The proposal also would not meet § 50.54(m)(2)(iii), which requires a licensed operator at the controls for each fueled unit (*i.e.*, 12 licensed operators). Absent alternative staffing requirements, future applicants referencing the NuScale design would need to request an exemption.

In the DCA Part 7, Section 6.2, “Justification for Rulemaking,” NuScale Power provided a technical basis for rulemaking language that would address control room staffing in conjunction with control room configuration.

NuScale Power’s approach is consistent with SECY–11–0098, “Operator Staffing for Small or Multi-Module Nuclear Power Plant Facilities,” dated July 22, 2011 (ADAMS Accession No. ML111870574). In Chapter 18, Section

18.5.4.2, “Evaluation of the Applicant’s Technical Basis,” of the final safety evaluation report (ADAMS Accession No. ML20023B605), the NRC found that NuScale Power’s proposed staffing level, as described in the DCA Part 7, Section 6, is acceptable. Because Section V, “Applicable Regulations,” of this proposed rule includes the alternative staffing requirement provisions, staffing table, and appropriate table notes, a future applicant or licensee that references proposed appendix G to 10 CFR part 52 would not need to request an exemption from § 50.54(m).

### B. Incorporation by Reference

The proposed Section III.A, “Incorporation by reference approval,” of appendix G to 10 CFR part 52 lists documents that would be approved by the Director of the Office of the Federal Register for incorporation by reference into this appendix. Proposed Section III.B.2 identifies information that is not within the scope of the design certification and, therefore, is not incorporated by reference into this appendix. This information includes conceptual design information, as defined in § 52.47(a)(24), and the discussion of “first principles” described in the Design Control Document (DCD) Part 2, Tier 2, Section 14.3.2, “Tier 1 Design Description and Inspections, Tests, Analyses, and Acceptance Criteria First Principles.”

### C. Issues Not Resolved by the Design Certification

The NRC identified three issues as not resolved within the meaning of § 52.63(a)(5). There was insufficient information available for the NRC to resolve issues regarding (1) the shielding wall design in certain areas of the plant; (2) the potential for containment leakage from the combustible gas monitoring system, and (3) the ability of the steam generator tubes to maintain structural and leakage integrity during density wave oscillations in the secondary fluid system, including the method of analysis to predict the thermal-hydraulic conditions of the steam generator secondary fluid system and resulting loads, stresses, and deformations from density wave oscillations from reverse flow.

#### 1. Shielding Wall Design

As discussed in Section 12.3.4.1.2 of the final safety evaluation report, the NRC found that there were insufficient design details available regarding shielding wall design with the presence of large penetrations, such as the main

steam lines; main feedwater lines; and power module bay heating, ventilation, and air conditioning lines in the radiation shield wall between the power module bay and the reactor building steam gallery area. Without this shielding design information, the NRC is unable to confirm that the radiological doses to workers will be maintained within the radiation zone limits specified in the application.

This issue is narrowly focused on the shielding walls between the reactor module bays and the reactor building steam gallery areas. The radiation zones and dose calculations, including dose calculations for the dose to workers, members of the public, and environmental qualification, in areas outside of the reactor module bay are calculated assuming a solid wall and currently do not account for penetrations in the shield wall. A COL applicant would be required to demonstrate penetration shielding adequate to address the following issues in the NuScale DCD: The plant radiation zones, environmental qualification dose calculations, and dose estimates for workers and the public. A COL applicant can provide this information for the NRC to review because this issue involves a localized area of the plant without affecting other aspects of the NRC's review of the NuScale design. Therefore, the NRC has determined that this information can be provided by a COL applicant that references this appendix without a demonstrable impact on safety or standardization. Appendix G to 10 CFR part 52, Section VI, "Issue Resolution," would clarify that this issue is not resolved within the meaning of § 52.63(a)(5), and Section IV, "Additional Requirements and Restrictions," would state that the COL applicant is responsible for providing the design information to address this issue.

## 2. Containment Leakage From the Combustible Gas Monitoring System

As documented in Section 12.3.4.1.3 of the final safety evaluation report, there was insufficient information available regarding NuScale combustible gas monitoring system and the potential for leakage from this system outside containment. Without additional information regarding the potential for leakage from this system, the NRC was unable to determine whether this leakage could impact analyses performed to assess main control room dose consequences, offsite dose consequences to members of the public, and whether this system can be safely re-isolated after monitoring is initiated due to potentially high dose

levels at or near the isolation valve location. The isolation valve can only be operated locally, and dose levels at the valve location have not been determined.

This issue is narrowly focused on the radiation dose implications as a result of using the post-accident combustible gas monitoring loop. A COL applicant would be required to demonstrate either that offsite and main control room dose calculations are not exceeded or that the system can be safely re-isolated, if needed. This issue does not affect normal plant operation or non-core damage accidents. The issue may be resolved by performing radiation dose calculations and demonstrating that doses would remain within applicable dose limits in 10 CFR part 20, "Standards for Protection Against Radiation." More information may be available at the COL application stage that would allow for more detailed calculations. Any design changes to address this issue would only affect the combustible gas monitoring loop to ensure it can be re-isolated or to ensure that dose limits are not exceeded. Such design changes would likely not have an impact on other systems or equipment, and the NRC would review such changes and any resulting effects on other structures, systems, and components during the COL application review to provide reasonable assurance of adequate protection. Therefore, the NRC has determined that this information can be provided by a COL applicant that references this appendix without a demonstrable impact on safety or standardization. Appendix G to 10 CFR part 52, Section VI, "Issue Resolution," would clarify that this issue is not resolved within the meaning of § 52.63(a)(5), and Section IV, "Additional Requirements and Restrictions," would state that the COL applicant is responsible for providing the design information to address this issue.

## 3. Steam Generator Stability During Density Wave Oscillations and Associated Method of Analysis

Section 5.4.1.2, "System Design," in Revision 2 of the DCA Part 2, Tier 2, stated that a flow restriction device at the inlet to each steam generator tube "ensures secondary-side flow stability and precludes density wave oscillations." However, the applicant modified this section in Revision 3 of the DCA Part 2, Tier 2 to state that the steam generator inlet flow restrictors provide the necessary secondary-side pressure drop "to reduce flow oscillations to acceptable limits." Revision 4.1 of the DCA (ADAMS

Accession No. ML20205L562) revised Section 5.4.1.2 to state that the steam generator inlet flow restrictors are designed "to reduce the potential for density wave oscillations." Revision 5 of the DCA (ADAMS Accession No. ML20225A071) provides only editorial changes to Revision 4.1 and does not change the technical content or conclusions.

Sections 3.9.2, 3.9.5, and 5.4.1 of the final safety evaluation report relied on the applicant's statements in Revision 2 and Revision 3 of the DCA that flow oscillations in the secondary fluid system of the steam generators would either be precluded or minimal. After issuance of the advanced safety evaluation report, the NRC noted inconsistencies and gaps in the information provided in Sections 3.9.1, 3.9.2, and 5.4.1 of Revision 4.1 of the DCA Part 2, Tier 2 regarding the potential for significant density wave oscillations in the steam generator tubes, including both forward and reverse secondary flow. The testing performed by the applicant on various conceptual designs of the steam generator inlet flow restrictors only involved flow in the forward direction without oscillation or reverse flow.

As a result, NuScale Power has not demonstrated that the flow oscillations that are predicted to occur on the secondary-side of the steam generators will not cause failure of the inlet flow restrictors. Structural and leakage integrity of the inlet flow restrictors in the steam generators is necessary to avoid damage to multiple steam generator tubes, caused directly by broken parts or indirectly by unexpected density wave oscillation loads. Damage to multiple steam generator tubes could disrupt natural circulation in the reactor coolant pathway and interfere with the decay heat removal system and the emergency core cooling system, which is relied upon to cool the reactor core in a NuScale nuclear power module. The failure of multiple steam generator tubes resulting from failure of an inlet flow restrictor has not been included within the scope of the NuScale accident analyses in DCA Part 2, Tier 2, Chapter 15. Therefore, the NRC concludes that NuScale Power has not demonstrated compliance with 10 CFR part 20 and 10 CFR part 50, appendix A, General Design Criterion (GDC) 4 and GDC 31, relative to potential impacts on steam generator tube integrity from inlet flow restrictor failure.

As described previously, NuScale Power made a change to the description of inlet flow restrictor performance beginning with DCA Part 2, Tier 2,



Revision 3, that indicates that the design no longer precludes density wave oscillations in the secondary-side of the steam generators. As a result, the design needs a method of analysis to predict the thermal-hydraulic conditions of the steam generator secondary fluid system and resulting loads, stresses, and deformations from density wave oscillations including reverse flow. However, an appropriate method of analysis has not been provided to the NRC.

The DCA Part 2, Tier 2, Section 3.9.1.2, “Computer Programs Used in Analyses,” lists the computer programs used by NuScale Power in the dynamic and static analyses of mechanical loads, stresses, and deformations, and in the hydraulic transient load analyses of seismic Category I components and supports for the NuScale nuclear power plant. Section 3.9.1.2 states that NRELAP5 is NuScale’s proprietary system thermal-hydraulics code for use in safety-related design and analysis calculations and is pre-verified and configuration-managed. The advanced safety evaluation report, Section 3.9.1.4.9, “Computer Programs Used in Analyses,” states that the NRELAP5 computer program had received verification and validation. Following preparation of the advanced safety evaluation report, the NRC noted a discrepancy between two statements in the DCA about validation for NRELAP5: DCA Part 2, Tier 2, Section 5.4.1.3 in Revision 4 stated that NRELAP5 was validated for determining density wave oscillation thermal-hydraulic conditions, referring to Section 15.0.2 for more information, but neither Section 15.0.2 nor TR-1016-51669 describe validation for determining density wave oscillation thermal-hydraulic conditions.

On June 19, 2020, NuScale submitted Revision 4.1 of the DCA Part 2, Tier 2 (ADAMS Accession No. ML20205L562; subsequently included in Revision 5 of the DCA submitted on July 29, 2020 (ADAMS Accession No. ML20225A071)) to correct the discrepancies, and acknowledges the need for a COL applicant to address secondary-side instabilities in the steam generator design. Specifically, the update to Section 3.9.1.2 in Revision 4.1 of DCA Part 2, Tier 2, references DCA Part 2, Tier 2, Section 15.0.2, “Review of Transient and Accident Analysis Methods,” for the discussion of the development, use, verification, validation, and code limitations of the NRELAP5 computer program for application to transient and accident analyses. The correction to Section 3.9.1.2 also references technical report

TR-1016-51669, “NuScale Power Module Short-Term Transient Analysis,” incorporated by reference in DCA Part 2, Tier 2, Table 1.6-2, for application of the NRELAP5 computer program to short-term transient dynamic mechanical loads, such as pipe breaks and valve actuations. In addition, the correction to Section 3.9.1.2 includes a new COL item specifying that a COL applicant that references the NuScale DCD would develop an evaluation methodology for the analysis of secondary-side instabilities in the steam generator design. The COL item states that this methodology would address the identification of potential density wave oscillations in the steam generator tubes and qualification of the applicable portions of the reactor coolant system integral reactor pressure vessel and steam generator given the occurrence of density wave oscillations, including the effects of reverse fluid flows within the tubes. These corrections to the DCA clarify that the evaluation methodology for the analysis of secondary-side instabilities in the steam generator design was not verified and validated as part of the NuScale DCA but would be accomplished by the COL applicant.

This steam generator design issue is narrowly focused on the effects of density wave oscillations in the secondary fluid system on steam generator tubes to maintain structural and leakage integrity, including the method of analysis to predict the thermal-hydraulic conditions of the steam generator secondary fluid system and resulting loads, stresses, and deformations from density wave oscillations including reverse flow. No other reactor safety aspect of the steam generators is impacted by this design issue. As a result, the NRC finds that this is an isolated issue that does not affect other aspects of the NRC’s review of the design of the NuScale nuclear power plant. Therefore, the NRC has determined that this information can be provided by a COL applicant that references this appendix, consistent with the other design information regarding steam generator integrity described in DCA Part 2, Tier 2, Sections 3.9.1, 3.9.2, and 5.4.1, without a demonstrable impact on safety or standardization. Therefore, appendix G to 10 CFR part 52, Section VI, “Issue Resolution,” would clarify that this issue is not resolved within the meaning of § 52.63(a)(5), and Section IV, “Additional Requirements and Restrictions,” would state that the COL applicant is responsible for providing the design information to address this issue.

#### IV. Technical Issues Associated With the NuScale Design

The NRC identified significant technical issues associated with the following design areas that were resolved by NuScale Power during the review:

- Comprehensive vibration assessment program;
- Containment safety analysis;
- Emergency core cooling system inadvertent actuation block valve;
- Conformance with GDC 27, “Combined Reactivity Control Systems Capability,” of appendix A, “General Design Criteria for Nuclear Power Plants,” to 10 CFR part 50;
- Absence of safety-related Class 1E alternating current (AC) or direct current (DC) electrical power;
- Accident source term methodology;
- Boron redistribution during passive cooling modes.

In addition, the NRC granted 17 exemptions from 10 CFR part 50 to address various aspects of NuScale’s design.

##### A. Comprehensive Vibration Assessment Program

The NuScale comprehensive vibration assessment program limits potentially adverse effects from flow, acoustic, and mechanically induced vibrations and resonances on NuScale power module components, including the helical coil steam generators. The NuScale steam generators are different from those of operating pressurized-water reactors in that the primary reactor coolant is on the outside of the steam generator tubes and the steam is on the inside. Because of this design, there is the possibility of density wave oscillation instabilities in the secondary coolant which could challenge the integrity of the tubes. The NRC’s review and findings, including independent analyses and observation of vibration testing, are documented in detail in Chapter 3, “Design of Structures, Components, Equipment, and Systems,” Section 3.9.2, “Dynamic Testing and Analysis of Systems, Structures, and Components,” of the final safety evaluation report. The review focused on assuring that the design of the helical coil steam generator tubes would not result in issues with flow-induced vibration.

As part of the comprehensive vibration assessment, the NRC also reviewed and found acceptable the steam generator tube margin against fluid-elastic instability, steam generator tube margin against vortex shedding, control rod drive shaft margin against vortex shedding, in-core instrument guide tube against vortex shedding,

decay heat removal system piping against acoustic resonance, and control rod assembly guide tube against turbulence buffeting. The steam generator tube margins against fluid-elastic instability and vortex shedding will be validated in the TF-3 testing facility as described in DCA Part 2, Tier 1, Section 2.1.1, "Design Description." In addition, the initial startup testing will confirm that flow-induced vibration will not cause adverse effects on the plant system components including the steam generator tubes. With the exception of the steam generator tube and inlet flow restrictor issue discussed previously, the NRC found the comprehensive vibration assessment program adequate to ensure the structural integrity of the NuScale power module components.

#### B. Containment Safety Analysis

NuScale incorporates novel and unique features which result in transient thermal-hydraulic responses that are different from those of currently licensed reactors.

There are several peak containment pressure analysis technical issues unique to NuScale, including the associated thermal-hydraulic analyses. In support of containment safety analysis, NuScale Power submitted technical report TR-0516-49084-P, Revision 3, "Containment Response Analysis Methodology," May 2020 (ADAMS Accession No. ML20141L808) that describes the conservative containment pressure and temperature safety analyses for several design-basis events related to the containment design margins. NuScale also submitted topical report TR-0516-49422, "Loss-of-Coolant Accident Evaluation Model," Revision 1, dated November 2019 (ADAMS Accession No. ML19331B585). This topical report describes the evaluation model used to analyze the power module response during a design-basis loss-of-coolant accident. The NRC reviewed this topical report as part of the containment safety analysis.

The NRC also observed thermal-hydraulic performance testing at NuScale Power's integrated system test facility, which validates the analytical model. Based on initial testing results and thermal-hydraulic analyses, NuScale Power made design changes to increase the initial reactor building pool level and the in-containment vessel design pressure to account for some uncertainties.

The NRC reviewed the details of the computer thermal-hydraulic evaluation model described in the DCA Part 2, Tier 2, Section 6.2.1.1 to determine whether any uncertainties were properly

accounted for and found the containment design margins to be acceptable. The associated safety evaluation report approving topical report TR-0516-49422 was issued on February 18, 2020 (ADAMS Accession No. ML20044E199). The NRC's review and specific findings, including independent analyses and observation of NuScale testing, are documented in Chapter 6, "Engineered Safety Features," Section 6.2.1.1, "Containment Structure," of the safety evaluation report.

#### C. Emergency Core Cooling System Inadvertent Actuation Block Valve

The NuScale emergency core cooling system relies on natural circulation cooling of the reactor core by releasing the heated reactor coolant steam from the top of the reactor pressure vessel through three reactor vent valves into the containment vessel and returning the cooled condensed reactor coolant water to the reactor pressure vessel through two reactor recirculation valves. Each reactor vent valve and reactor recirculation valve consists of a first-of-a-kind arrangement of a main valve, an inadvertent actuation block (IAB) valve, a solenoid trip valve, and a solenoid reset valve. The IAB valve for each reactor vent valve and reactor recirculation valve is designed to close rapidly to prevent its corresponding emergency core cooling system main valve from opening when the reactor coolant system is at high pressure conditions. Premature opening of the emergency core cooling system main valves could result in fuel damage. The IAB valve then opens at reduced reactor coolant system pressure to allow the main valve to open and permit natural circulation cooling of the reactor core in response to a plant event. Although the valve assemblies are considered an active component, NuScale does not apply the single failure criterion to the IAB valve, including to the IAB valve's function to close. Consistent with Commission safety goals and the practice of risk-informed decisionmaking, the NRC evaluated the NuScale emergency core cooling system valve system without assuming a single active failure of the IAB valve to close.

During design demonstration tests of the first-of-a-kind emergency core cooling system valve system performed under § 50.43(e), NuScale Power implemented design modifications to the main valve and IAB valve to demonstrate that the IAB valve will operate within a specific design pressure range. The DCD specifies that the emergency core cooling system valves (including the IAB valves) will be

qualified under American Society of Mechanical Engineers Standard QME-1-2007, "Qualification of Active Mechanical Equipment Used in Nuclear Power Plants," as endorsed by NRC Regulatory Guide 1.100, Revision 3, "Seismic Qualification of Electrical and Active Mechanical Equipment and Functional Qualification of Active Mechanical Equipment for Nuclear Power Plants," prior to installation in a NuScale nuclear power plant. Additionally, the NRC regulations in § 50.55a require that a NuScale nuclear power plant satisfy American Society of Mechanical Engineers Operation and Maintenance of Nuclear Power Plants, Division 1, OM Code: Section IST (OM Code) as incorporated by reference in § 50.55a for inservice testing of the emergency core cooling system valves, unless relief is granted or an alternative is authorized by the NRC. The NRC's review and findings related to the IAB valve are documented in safety evaluation report Chapter 3, "Design of Structures, Components, Equipment, and Systems," Section 3.9.6, "Functional Design, Qualification, and Inservice Testing Programs for Pumps, Valves, and Dynamic Restraints." These findings show that the NRC regulatory requirements and DCD Part 2, Tier 2 provisions provide reasonable assurance that the emergency core system valve system will be capable of performing its design-basis functions in light of the safety significance of the required opening and closing pressures for the individual IAB valves.

Further, Chapter 15, "Transient and Accident Analyses," Section 15.0.0.5, "Limiting Single Failures," of the safety evaluation report states that the IAB valve is a first-of-a-kind, safety-significant, active component integral to the NuScale emergency core cooling system. NuScale does not apply the single failure criterion to the IAB valve, and the Commission directed the staff in SRM-SECY-19-0036, "Staff Requirements—SECY-19-0036—Application of the Single Failure Criterion to NuScale Power LLC's Inadvertent Actuation Block Valves," (ADAMS Accession No. ML19183A408) to "review Chapter 15 of the NuScale Design Certification Application without assuming a single active failure of the inadvertent actuation block valve to close." The Commission further stated that "[t]his approach is consistent with the Commission's safety goal policy and associated core damage and large release frequency goals and existing Commission direction on the use of risk-informed decision-making, as articulated in the 1995 Policy Statement

on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities and the White Paper on Risk-Informed and Performance-Based Regulation (in SRM-SECY-98-144, "White Paper on Risk-Informed and Performance-Based Regulation," and Yellow Announcement 99-019)."

Based on the NRC's historic application of the single failure criterion and Commission direction on the subject, as described in SECY-77-439, "Single Failure Criterion" (ADAMS Accession No. ML060260236), SRM-SECY-94-084, "Policy and Technical Issues associated with the Regulatory Treatment of Non-Safety Systems and Implementation of Design Certification and Light-Water Reactor Design Issues" (ADAMS Accession No. ML003708098), and SRM-SECY-19-0036, the NRC has retained discretion, in fact- or application-specific circumstances, to decide when to apply the single failure criterion. The Commission's decision in SRM-SECY-19-0036 provides direction regarding the appropriate application and interpretation of the regulatory requirements in 10 CFR part 50 to the NuScale IAB valve's function to close. This decision is similar to those in previous Commission documents that addressed the use of the single failure criterion and provided clarification on when to apply the single failure criterion in other specific instances.

#### *D. Exemption to General Design Criterion 27, "Combined Reactivity Control Systems Capability"*

NuScale Power determined that, under certain end-of-cycle scenarios with one control rod stuck out, the NuScale reactivity control systems could not prevent re-criticality and return to power. This result does not meet GDC 27 of appendix A to 10 CFR part 50, which covers reactivity control systems to reliably control reactivity changes under postulated accident conditions with margin for stuck control rods. Therefore, NuScale Power submitted an exemption request for GDC 27 (refer to Section 15, "10 CFR 50, Appendix A, Criterion 27, Combined Reactivity Control Systems Capability," of DCA Part 7, "Exemptions").

NuScale Power analyses determined that the specified acceptable fuel design limits would not be exceeded and that core cooling would be maintained during a return to power under these scenarios. The global core power level would be less than 10 percent and within capacity of the safety-related, passive decay heat removal system. The NRC independently verified NuScale Power's results and found that NuScale

achieves the fundamental safety functions for nuclear reactor safety, which are to control heat generation, remove heat, and limit the release of radioactive materials. Chapter 15, Section 15.0.6.4.1, of the safety evaluation report contains details of the evaluation of this exemption request. Additional information is provided in SECY-18-0099, "NuScale Power Exemption Request from 10 CFR part 50, Appendix A, General Design Criterion 27, 'Combined Reactivity Control Systems Capability'" (ADAMS Accession No. ML18065A431), dated October 9, 2018. The NRC granted the exemption request.

#### *E. Safety-Related Class 1E AC or DC Electrical Power*

NuScale does not contain safety-related Class 1E AC or DC electrical power systems. The purpose of appendix A to 10 CFR part 50, GDC 17, "Electric Power Systems," is to ensure that sufficient electric power is available to accomplish plant functions important to safety. NuScale provides passive safety systems and features to accomplish plant safety-related functions without reliance on electrical power.

NuScale incorporates several innovative features that reduce the overall complexity of the design and lower the number of safety-related systems necessary to mitigate postulated accidents. NuScale has no safety-related functions that rely on electrical power. For example, the emergency core cooling system performs its safety function without reliance on safety-related electrical power or external sources of coolant inventory makeup. NuScale Power provided a methodology to substantiate its assertion that the safety-related systems do not rely on Class 1E electrical power in topical report TR-0815-16497, "Safety Classification of Passive Nuclear Power Plant Electrical Systems," dated February 23, 2018 (ADAMS Accession No. ML18054B607). The NRC reviewed topical report TR-0815-16497 and concluded that NuScale Power demonstrated that the safety-related systems do not rely on Class 1E electrical power. The NRC's review and conclusions are documented in a safety evaluation report approving topical report TR-0815-16497 (ADAMS Accession No. ML17048A459) issued December 13, 2017, as described in the final safety evaluation report for Chapter 1, "Introduction and General Discussion," (ADAMS Accession No. ML20204A986).

Because no safety-related functions of NuScale rely on electrical power,

NuScale does not need any safety-related electrical power systems. Therefore, NuScale Power requested an exemption from GDC 17, which requires the provision of onsite and offsite power to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. The NRC determined that, subject to limitations and conditions stipulated in its safety evaluation report for TR-0815-16497, the underlying purpose of GDC 17 (to ensure sufficient electric power is available to accomplish the safety functions of the respective systems), is met without reliance on Class 1E electric power. In other words, the onsite and offsite electric power systems are classified as non-Class 1E systems and electric power is not needed (1) to achieve or maintain safe shutdown, (2) to assure specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences, or (3) to maintain core cooling, containment integrity, and other vital functions during postulated accidents. Further, the onsite and offsite power systems are not needed to permit functioning of structures, systems, and components important to safety. Therefore, NuScale Power was granted an exemption from GDC 17. The NRC's evaluation of NuScale Power's exemption request from the requirements of GDC 17 is documented in Section 8.1.5, "Technical Evaluation for Exemptions," of the final safety evaluation report for Chapter 8, "Electric Power" (ADAMS Accession No. ML20023B614).

#### *F. Accident Source Term Methodology*

The NRC reviewed NuScale Power's methods for developing accident source terms and performing accident radiological consequence analyses. As defined in § 50.2, "Definitions," a source term "refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the timing of their release." NuScale Power developed source terms for deterministic accidents for NuScale that are similar to those which have been used in safety and siting assessments for large light water reactors. The design-basis accidents for

NuScale are the main steam line break outside containment, rod ejection accident, fuel handling accident, steam generator tube failure, and the failure of small lines carrying primary coolant outside containment.

To address the source term regulatory requirements, NuScale Power submitted topical report TR-0915-17565, Revision 3, "Accident Source Term Methodology," dated April 2019 (ADAMS Accession No. ML19112A172). The topical report proposes a methodology to develop a source term based on several severe accident scenarios that result in core damage, taken from the design probabilistic risk assessment. This source term is the surrogate radiological source term for a core damage event.

The topical report also provides methods for determining radiation sources not developed from core damage scenarios for use in the evaluation of environmental qualification of equipment under § 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants." Specifically, the report describes an iodine spike source term not involving core damage, which is a surrogate accident that bounds potential accidents with release of the reactor coolant into the containment vessel.

The staff submitted a related information paper to the Commission, SECY-19-0079, "Staff Approach to Evaluate Accident Source Terms for the NuScale Power Design Certification Application," dated August 16, 2019 (ADAMS Accession No. ML19107A455), describing the regulatory and technical issues raised by unique aspects of NuScale Power's proposed methodology and the staff's approach to reviewing topical report TR-0915-17565.

The NRC's review and findings of topical report TR-0915-17565, Revision 3, are documented in the topical report final safety evaluation report issued on October 29, 2019 (ADAMS Accession No. ML19297G520). The approved version TR-0915-17565-NP-A, Revision 4 (ADAMS Accession No. ML20057G132) is discussed in the DCA safety evaluation report Section 12.2, "Radiation Sources," Section 12.3, "Radiation Protection Design Features," Section 3.11 "Environmental Qualification of Mechanical and Electrical Equipment," and Section 15.0.3, "Radiological Consequences of Design Basis Accidents." The NRC found the accident source terms acceptable for the purposes described in each of the above safety evaluation report sections.

### *G. Boron Redistribution During Passive Cooling Modes*

The NRC evaluated the effects of boron volatility and redistribution during long term passive cooling. During this mode of operation, boron-free steam will enter the downcomer and containment which can potentially challenge reactor core shutdown margin and could lead to a return to power. The NRC reviewed analyses provided by NuScale Power demonstrating that the reactor remains subcritical and that specified acceptable fuel design limits are not exceeded. The NRC evaluated the technical basis for NuScale Power's approach and conducted confirmatory calculations and independent assessments to determine its acceptability. The staff's review is primarily documented in Chapter 15, Section 15.0.5, "Long Term Decay Heat and Residual Heat Removal," and Section 15.6.5, "Loss of Coolant Accidents Resulting from Spectrum of Postulated Piping Breaks within the Reactor Coolant Pressure Boundary," of the safety evaluation report. Specifically, the staff concluded that the top of active fuel remains covered with acceptably low cladding temperatures and that for beginning-of-cycle and middle-of-cycle conditions, with no operator actions, the core remains subcritical. The potential for an end-of-cycle return to power is discussed in Section IV.D, "Exemption to General Design Criterion 27, 'Combined Reactivity Control Systems Capability,'" of this document. In addition, Chapter 19, Section 19.1.4.6.4, "Success Criteria, Accident Sequences, and Systems Analyses," of the safety evaluation report concludes that an operator error during recovery of the module from an uneven boron distribution scenario is unlikely to lead to core damage and is not a significant risk contributor.

### *H. Exemptions*

NuScale Power submitted a total of 17 requests for exemptions from the following regulations, including those discussed as part of the significant technical issues mentioned previously (see Table 1.14-1, "NuScale Design Certification Exemptions," in Chapter 1 of the final safety evaluation report (ADAMS Accession No. ML20204A986)):

1. §§ 50.46a and 50.34(f)(2)(vi) (Reactor Coolant System Venting)
2. § 50.44 (Combustible Gas Control)
3. § 50.62(c)(1) (Reduction of Risk from Anticipated Transients Without Scram)
4. Appendix A to 10 CFR part 50, GDC 17, "Electric Power Systems"; GDC

18, "Inspection and Testing of Electric Power Systems"; and related provisions of GDC 34, "Residual Heat removal"; GDC 35, "Emergency Core Cooling"; GDC 38, "Containment Heat Removal"; GDC 41, "Containment Atmosphere Cleanup"; and GDC 44, "Cooling Water" (Electric Power Systems GDCs)

5. Appendix A to 10 CFR part 50, GDC 33, "Reactor Coolant Makeup"
6. § 50.54(m) (Control Room Staffing) (Alternative to meet the regulation)
7. Appendix A to 10 CFR part 50, GDC 52, "Capability for Containment Leakage Rate Testing"
8. Appendix A to 10 CFR part 50, GDC 40, "Testing of Containment Heat Removal System"
9. Appendix A to 10 CFR part 50, GDC 55, "Reactor Coolant Pressure Boundary Penetrating Containment," GDC 56, "Primary Containment Isolation," and GDC 57, "Closed Systems Isolation Valves" (Containment Isolation)
10. Appendix K to 10 CFR part 50 (Emergency Core Cooling System Evaluation Models)
11. § 50.34(f)(2)(xx) (Power Supplies for Pressurizer Relief Valves, Block Valves, and Level Indicators)
12. § 50.34(f)(2)(xiii) (Pressurizer Heater Power Supplies)
13. § 50.34(f)(2)(xiv)(E) (Containment Evacuation System Isolation)
14. § 50.46 (Fuel Rod Cladding Material)
15. Appendix A to 10 CFR part 50, GDC 27, "Combined Reactivity Control Systems Capability"
16. § 50.34(f)(2)(viii) (Post-Accident Sampling)
17. Appendix A to 10 CFR part 50, GDC 19, "Control Room"

NRC's safety evaluation report for Chapter 1, "Introduction and General Discussion" Section 1.14, "Index of Exemptions," lists these exemption requests with the corresponding sections of the safety evaluation reports where these exemption requests have been evaluated. The NRC granted each exemption request.

### **V. Discussion**

#### *Final Safety Evaluation Report*

NuScale Power submitted the final revision of the NuScale DCA, Revision 5, in July 2020 (ADAMS Accession No. ML20225A071). In August 2020, the NRC issued a final safety evaluation report (ADAMS Accession No. ML20023A318) after the Advisory Committee on Reactor Safeguards (ACRS) performed its final independent review and issued its letter to the Commission in July 2020 on its findings

and recommendations (ADAMS Accession No. ML20211M386). The final safety evaluation report is a collection of reports written by the NRC documenting the safety findings from its review of the standard design application, and it reflects all changes resulting from interactions with the ACRS as well as changes in the final version of the DCA. The final safety evaluation report reflects that NuScale Power has resolved all technical and safety issues with the exception of the three issues discussed previously. The final safety evaluation report describes the portions of the design that are not receiving finality in this rule and, therefore, will not be part of the certified design. The final safety evaluation report includes an index of all NRC requests for additional information, a chronology of all documents related to the NuScale DCA review, and summaries of public meetings and audits.

#### *NuScale Design Certification Proposed Rule*

The following discussion describes the purpose and key aspects of each section of this NuScale design certification proposed rule. All section and paragraph references are to the provisions being added as appendix G to 10 CFR part 52, unless otherwise noted. The NRC has modeled this NuScale design certification proposed rule on existing design certification rules, with certain modifications where necessary to account for differences in the design documentation, design features, and environmental assessment (including severe accident mitigation design alternatives). As a result, design certification rules are standardized to the extent practical.

#### A. Introduction (Section I)

The purpose of Section I of appendix G to 10 CFR part 52 is to identify the standard design that would be approved by this design certification proposed rule and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement appendix G to 10 CFR part 52 for two reasons. First, the implementation of § 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to obtain the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant vendor, then the COL applicant must meet the requirements in § 52.73. Second,

paragraph X.A.1 would require that the identified design certification applicant maintain the generic DCD throughout the time that appendix G to 10 CFR part 52 may be referenced.

#### B. Definitions (Section II)

The purpose of Section II of appendix G to 10 CFR part 52 is to define specific terminology with respect to this design certification proposed rule. During development of the first two design certification rules, the NRC decided that there would be both generic DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant or licensee that references a 10 CFR part 52 appendix. This distinction is necessary in order to specify the relevant plant-specific requirements to applicants and licensees referencing appendix G to 10 CFR part 52.

In order to facilitate the maintenance of the generic DCDs, the NRC requires that applicants for a standard design certification update their application to include an electronic copy of the final version of the DCD. The final version incorporates all amendments to the DCA submitted since the original application and any changes directed by the NRC as a result of its review of the original DCA or as a result of public comments. This final version is then incorporated by reference in the design certification rule. Once incorporated by reference, the final version becomes the “generic DCD,” which will be maintained by the design certification applicant and the NRC and updated as needed to include any generic changes made after this design certification rulemaking. These changes would occur as the result of generic rulemaking by the NRC, under the change criteria in Section VIII of appendix G to 10 CFR part 52.

The NRC also requires each applicant and licensee referencing appendix G to 10 CFR part 52 to submit and maintain a plant-specific DCD as part of the COL final safety analysis report. The plant-specific DCD must either include or incorporate by reference the information in the generic DCD. The COL licensee will be required to maintain the plant-specific DCD, updating it as necessary to reflect the generic changes to the DCD that the NRC may adopt through rulemaking, plant-specific departures from the generic DCD that the NRC imposes on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in Section VIII of appendix G to 10 CFR part 52. A COL applicant may also have to include considerations for multi-module

facilities in the plant-specific DCD that were not previously evaluated as part of the design certification rule, depending on the contents of the application. Therefore, the plant-specific DCD functions like an updated final safety analysis report because it would provide the most complete and accurate information on a plant’s design basis for that part of the plant that would be within the scope of appendix G to 10 CFR part 52.

The NRC is treating the technical specifications in Chapter 16, “Technical Specifications,” of the generic DCD as a special category of information and designating them as generic technical specifications in order to facilitate the special treatment of this information under appendix G to 10 CFR part 52. A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified as specified in paragraph VIII.C, and the remaining site-specific information needed to complete the technical specifications. The final safety analysis report that is required by § 52.79 will consist of the plant-specific DCD, the site-specific final safety analysis report, and the plant-specific technical specifications.

The terms Tier 1, Tier 2, and COL items (license information) are defined in appendix G to 10 CFR part 52 because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC use these terms in implementing a two-tiered rule structure (the DCD is divided into Tier 1 and Tier 2 to support the rule structure) that was proposed by representatives of the nuclear industry after publication of 10 CFR part 52. The Commission approved the use of the two-tiered rule structure in its staff requirements memorandum, dated February 15, 1991, on SECY-90-377, “Requirements for Design Certification under 10 CFR part 52,” dated November 8, 1990 (ADAMS Accession No. ML003707892).

Tier 1 information means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix. Tier 2 information means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix. The change process for Tier 2 information is similar, but not identical to, the change process set forth in § 50.59. The regulations in § 50.59 describe when a licensee may make changes to a plant as described in its final safety analysis report without a

license amendment. Because of some differences in how the change control requirements are structured in the design certification rules, certain definitions contained in § 50.59 are not applicable to 10 CFR part 52 and are not being included in this proposed rule. The NRC is including a definition for “*Departure from a method of evaluation*” in paragraph II.F of appendix G to 10 CFR part 52, so that the eight criteria in paragraph VIII.B.5.b will be implemented for new reactors as intended.

### C. Scope and Contents (Section III)

The purpose of Section III of appendix G to 10 CFR part 52 is to describe and define the scope and content of this design certification, explain how to obtain a copy of the generic DCD, identify requirements for incorporation by reference of the design certification rule, and set forth how documentation discrepancies or inconsistencies are to be resolved.

Paragraph III.A is the required statement of the Office of the Federal Register for approval of the incorporation by reference of the NuScale DCD, Revision 5. In addition, this paragraph provides the information on how to obtain a copy of the DCD. Unlike previous design certifications, the documents submitted to the NRC by NuScale Power did not use the title “Design Control Document;” they used the title “Design Certification Application” instead.

Paragraph III.B is the requirement for COL applicants and licensees referencing the NuScale DCD. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the *Code of Federal Regulations*. This material, like any other properly issued regulation, has the force and effect of law. Tier 1 and Tier 2 information (including the technical and topical reports referenced in the DCD Tier 2, Chapter 1) and generic technical specifications have been combined into a single document called the generic DCD in order to effectively control this information and facilitate its incorporation by reference into the rule. In addition, paragraph III.B clarifies that the conceptual design information and NuScale Power’s evaluation of severe accident mitigation design alternatives are not considered to be part of appendix G to 10 CFR part 52. As provided by § 52.47(a)(24), these conceptual designs are not part of appendix G to 10 CFR part 52 and, therefore, are not applicable to an application that references appendix G to 10 CFR part 52. Therefore, an

applicant would not be required to conform to the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Similarly, the severe accident mitigation design alternatives were required to facilitate the environmental assessment.

Paragraphs III.C and III.D set forth the manner by which potential conflicts are to be resolved and identify the controlling document. Paragraph III.C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the final safety evaluation report for the certified standard design.

Paragraph III.E makes it clear that design activities outside the scope of the design certification may be performed using actual site characteristics. This provision applies to site-specific portions of the plant, such as the administration building.

### D. Additional Requirements and Restrictions (Section IV)

Section IV of appendix G to 10 CFR part 52 sets forth additional requirements and restrictions imposed upon an applicant who references appendix G to 10 CFR part 52.

Paragraph IV.A sets forth the information requirements for COL applicants and distinguishes between information and documents that must be *included* in the application or the DCD and those which may be *incorporated by reference*. Any incorporation by reference in the application should be clear and should specify the title, date, edition or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated. The legal effect of such an incorporation by reference into the application is that appendix G to 10 CFR part 52 would be legally binding on the applicant or licensee.

In paragraph IV.B the NRC reserves the right to determine how appendix G to 10 CFR part 52 may be referenced under 10 CFR part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary

because the previous design certification rules were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was issued. The NRC’s concern is with the manner by which the inspections, tests, analyses, and acceptance criteria (ITAAC) were developed and the lack of experience with design certifications in a licensing proceeding. Therefore, it is appropriate that the NRC retain some discretion regarding the manner by which appendix G to 10 CFR part 52 could be referenced in a 10 CFR part 50 licensing proceeding.

### E. Applicable Regulations (Section V)

The purpose of Section V of appendix G to 10 CFR part 52 is to specify the regulations that were applicable and in effect at the time this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that would not be applicable to this certified design.

### F. Issue Resolution (Section VI)

The purpose of Section VI of appendix G to 10 CFR part 52 is to identify the scope of issues that would be resolved by the NRC through this proposed rule and, therefore, are “matters resolved” within the meaning and intent of § 52.63(a)(5). The section is divided into five parts: Paragraph VI.A identifies the NRC’s safety findings in adopting appendix G to 10 CFR part 52, paragraph VI.B identifies the scope and nature of issues that would be resolved by this proposed rule, paragraph VI.C identifies issues which are not resolved by this proposed rule, and paragraph VI.D identifies the issue finality restrictions applicable to the NRC with respect to appendix G to 10 CFR part 52.

Paragraph VI.A describes the nature of the NRC’s findings in general terms and makes the findings required by § 52.54 for the NRC’s approval of this design certification proposed rule.

Paragraph VI.B sets forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph VI.B clarifies that issue resolution, as described in the remainder of the paragraph, extends to the delineated NRC proceedings referencing appendix G to 10 CFR part 52. The remainder of paragraph VI.B describes the categories of information for which there is issue resolution.

Paragraph VI.C reserves the right of the NRC to impose operational

requirements on applicants that reference appendix G to 10 CFR part 52. This provision reflects the fact that only some operational requirements, including portions of the generic technical specification in Chapter 16 of the DCD, were completely or comprehensively reviewed by the NRC in this design certification proposed rule proceeding. The NRC notes that operational requirements may be imposed on licensees referencing this design certification through the inclusion of license conditions in the license or inclusion of a description of the operational requirement in the plant-specific final safety analysis report.<sup>1</sup> The NRC's choice of the regulatory vehicle for imposing the operational requirements will depend upon, among other things, (1) whether the development and/or implementation of these requirements must occur prior to either the issuance of the COL or the Commission finding under § 52.103(g), and (2) the nature of the change controls that are appropriate given the regulatory, safety, and security significance of each operational requirement.

Also, paragraph VI.C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. License conditions for portions of the plant within the scope of this design certification (*e.g.*, startup and power ascension testing) are not restricted by § 52.63. The requirement to perform these testing programs is contained in the Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation when the ITAAC are satisfied. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the NRC is reserving the right to impose, at the time of COL issuance, license conditions addressing post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph VI.D reiterates the restrictions (contained in Section VIII of appendix G to 10 CFR part 52) placed upon the NRC when ordering generic or plant-specific modifications, changes, or additions to structures, systems, and

components, design features, design criteria, and ITAAC within the scope of the certified design.

Paragraph VI.E provides that the NRC will specify at an appropriate time the procedures on how to obtain access to sensitive unclassified and non-safeguards information (SUNSI) and safeguards information (SGI) for the NuScale design certification rule. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as hearings required by § 52.85 or an adjudicatory hearing. For proceedings where the notice of hearing was published before the effective date of the final rule, the Commission's order governing access to SUNSI and SGI shall be used to govern access to such information within the scope of the rulemaking. For proceedings in which the notice of hearing or opportunity for hearing is published after the effective date of the final rule, paragraph VI.E applies and governs access to SUNSI and SGI.

#### G. Duration of This Appendix (Section VII)

The purpose of Section VII of appendix G to 10 CFR part 52 is, in part, to specify the period during which this design certification may be referenced by an applicant for a COL, under § 52.55, and the period it will remain valid when the design certification is referenced. For example, if an application references this design certification during the 15-year period, then the design certification would be effective until the application is withdrawn or the license issued on that application expires. The NRC intends for appendix G to 10 CFR part 52 to remain valid for the life of any COL that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to, or plant-specific departures from, information in the plant-specific DCD must be made under the change processes in Section VIII for the life of the plant.

#### H. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII of appendix G to 10 CFR part 52 is to set forth the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The NRC adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference design certification rules. Section VIII is divided into three paragraphs, which

correspond to Tier 1, Tier 2, and operational requirements.

Generic *changes* (called "modifications" in § 52.63(a)(3)) must be accomplished by rulemaking because the intended subject of the change is this design certification rule itself, as is contemplated by § 52.63(a)(1). Consistent with § 52.63(a)(3), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change technically irrelevant. By contrast, plant-specific *departures* could be required by either an order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a § 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X would require an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, the following discussion refers to the processes for both generic changes and plant-specific departures as "change processes." Section VIII refers to an exemption from one or more requirements of this appendix and addresses the criteria for granting an exemption. The NRC cautions that when the exemption involves an underlying substantive requirement (*i.e.*, a requirement outside this appendix), then the applicant or licensee requesting the exemption must demonstrate that an exemption from the underlying applicable requirement meets the criteria of §§ 52.7 and 50.12.

For the NuScale review, the staff followed the approach described in SECY-17-0075, "Planned Improvements in Design Certification Tiered Information Designations," dated July 24, 2017 (ADAMS Accession No. ML16196A321), to evaluate the applicant's designation of information as Tier 1 or Tier 2 information. Unlike some of the prior DCAs, this application did not contain any Tier 2\* information. As described in SECY-17-0075, prior design certification rules in 10 CFR part 52, appendices A through E, information contained in the DCD was divided into three designations: Tier 1, Tier 2, and Tier 2\*. Tier 1 information is the portion of design-related information in the generic DCD that the Commission approves in the 10 CFR part 52 design certification rule appendices. To change Tier 1 information, NRC approval by rulemaking or approval of an exemption from the certified design rule is required. Tier 2 information is also approved by the Commission in the 10 CFR part 52 design certification rule

<sup>1</sup> Certain activities ordinarily conducted following fuel load and, therefore, considered "operational requirements," but which may be relied upon to support a Commission finding under § 52.103(g), may themselves be the subject of ITAAC to ensure their implementation prior to the § 52.103(g) finding.



appendices, but it is not certified and licensees who reference the design can change this information using the process outlined in Section VIII of the appendices. This change process is similar to that in § 50.59 and is generally referred to as the “50.59-like” process. If the criteria in Section VIII are met, a licensee can change Tier 2 information without prior NRC approval.

As mentioned in the previous paragraph, the NRC has used a third category, Tier 2\*, in other design certification rules. This third category was created to address industry requests to minimize the scope of Tier 1 information and provide greater flexibility for making changes. Unlike Tier 2 information, all changes to Tier 2\* information require a license amendment, but unlike Tier 1 information, no exemption is required. In those rules, Tier 2\* information has the same safety significance as Tier 1 information but is part of the Tier 2 section of the DCD to afford more flexibility for licensees to change this type of information.

The applicant did not designate or categorize any Tier 2\* information in the NuScale DCA. The NRC evaluated the Tier 2 information to determine whether any of that information should require NRC approval before it is changed. If the NRC had identified any such information in Tier 2, then the NRC would have requested that the applicant revise the application to categorize that information as Tier 1 or Tier 2\*. The NRC did not identify any information in Tier 2 that should be categorized as Tier 2\*. Because neither the applicant nor the NRC have designated any information in the DCD as Tier 2\*, that designation and related requirements are not being used in this design certification rule.

#### Tier 1 Information

Paragraph A of Section VIII describes the change process for changes to Tier 1 information that are accomplished by rulemakings that amend the generic DCD and are governed by the standards in § 52.63(a)(1). A generic change under § 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with NRC regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed

design information necessary to resolve select design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. The rulemakings must provide for notice and opportunity for public comment on the proposed change under § 52.63(a)(2). The NRC will give consideration as to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

Departures from Tier 1 may occur in two ways: (1) The NRC may order a licensee to depart from Tier 1, as provided in paragraph VIII.A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as addressed in paragraph VIII.A.4. If the NRC seeks to order a licensee to depart from Tier 1, paragraph VIII.A.3 would require that the NRC find both that the departure is necessary for adequate protection or for compliance and that special circumstances are present. Paragraph VIII.A.4 would provide that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of §§ 52.63(b)(1) and 52.98(f), which provide an opportunity for a hearing. In addition, the NRC would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

#### Tier 2 Information

Paragraph B of Section VIII describes the change processes for the Tier 2 information; which have the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions would be different. Generic Tier 2 changes would be accomplished by rulemaking that would amend the generic DCD and would be governed by the standards in § 52.63(a)(1). A generic change under § 52.63(a)(1) would not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with NRC regulations that were applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve select design acceptance criteria;

(5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information.

Departures from Tier 2 would occur in four ways: (1) The NRC may order a plant-specific departure, as set forth in paragraph VIII.B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph VIII.B.4; (3) a licensee may make a departure without prior NRC approval under paragraph VIII.B.5; or (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph VIII.B.5 as provided in paragraph VIII.B.5.e.

Similar to ordered Tier 1 departures and generic Tier 2 changes, ordered Tier 2 departures could not be imposed except when necessary, either to bring the certification into compliance with the NRC's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph VIII.B.3. However, unlike Tier 1 departures, the Commission would not have to consider whether the special circumstances for the Tier 2 departures would outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by § 52.63(a)(4). The NRC has determined that it is not necessary to impose an additional limitation for standardization similar to that imposed on Tier 1 departures by § 52.63(a)(4) and (b)(1) because it would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee would be permitted to request an exemption from Tier 2 information as set forth in paragraph VIII.B.4. The applicant or licensee would have to demonstrate that the exemption complies with one of the special circumstances in regulations governing specific exemptions in § 50.12(a). In addition, the NRC would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, unlike Tier 1 changes, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant

for a license, the exemption would be subject to litigation in the same manner as other issues in the licensing hearing, consistent with § 52.63(b)(1). If the exemption is requested by a licensee, then the exemption would be subject to litigation in the same manner as a license amendment.

Paragraph VIII.B.5 would allow an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if it does not involve a change to, or departure from, Tier 1 information, technical specification, or does not require a license amendment under paragraphs VIII.B.5.b or c. The technical specifications referred to in VIII.B.5.a of this paragraph are the technical specifications in Chapter 16 of the generic DCD, including bases, for departures made prior to the issuance of the COL. After the issuance of the COL, the plant-specific technical specifications would be controlling under paragraph VIII.B.5. The requirement for a license amendment in paragraph VIII.B.5.b would be similar to the requirement in § 50.59 and would apply to all of the information in Tier 2 except for the information that resolves the severe accident issues or the information required by § 52.47(a)(28) to address aircraft impacts.

Paragraph VIII.B.5.d addresses information described in the DCD to address aircraft impacts, in accordance with § 52.47(a)(28). Under § 52.47(a)(28), applicants are required to include the information required by § 50.150(b) in their DCD. An applicant or licensee who changes this information is required to consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by § 50.150(a). The applicant or licensee is also required to describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the assessment requirements in § 50.150(a)(1). Submittal of this updated information is governed by the reporting requirements in Section X.B.

During an ongoing adjudicatory proceeding (e.g., for issuance of a COL), a party who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information may petition to admit such a contention into the proceeding under paragraph VIII.B.5.g. As set forth in paragraph VIII.B.5.g, the petition would have to comply with the requirements of § 2.309 and show that the departure does not comply with paragraph VIII.B.5. If on the basis of the petition and any responses thereto, the

presiding officer in the proceeding determines that the required showing has been made, the matter would be certified to the Commission for its final determination. In the absence of a proceeding, assertions of nonconformance with paragraph VIII.B.5 requirements applicable to Tier 2 departures would be treated as petitions for enforcement action under § 2.206.

#### Operational Requirements

The change process for technical specifications and other operational requirements that were reviewed and approved in the design certification rule is set forth in Section VIII, paragraph C. The key to using the change processes described in Section VIII is to determine if the proposed change or departure would require a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B would apply. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C would apply. This change process has elements similar to the Tier 1 and Tier 2 change processes in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for technical specifications and other operational requirements, the NRC designated a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The language in paragraph VIII.C also distinguishes between generic (Chapter 16 of the DCD) and plant-specific technical specifications to account for the different treatment and finality consistent with technical specifications before and after a license is issued.

The process in paragraph VIII.C.1 for making generic changes to the generic technical specifications in Chapter 16 of the DCD or other operational requirements in the generic DCD would be accomplished by rulemaking and governed by the backfit standards in § 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in the design certification rule would be based upon the extent to which the NRC reached a safety conclusion in the final safety evaluation report on this matter. If a technical specification or operational requirement was completely reviewed and finalized in the design

certification rule, then the requirement of § 50.109 would apply because a position was taken on that safety matter. Generic changes made under paragraph VIII.C.1 would be applicable to all applicants or licensees (refer to paragraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Some generic technical specifications contain values in brackets [ ]. The brackets are placeholders indicating that the NRC's review is not complete, and represent a requirement that the applicant for a COL referencing the NuScale design certification rule must replace the values in brackets with final plant-specific values (refer to guidance provided in Regulatory Guide 1.206, Revision 1, "Applications for Nuclear Power Plants," dated October 2018 (ADAMS Accession No. ML18131A181)). The values in brackets are neither part of the design certification rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications.

Plant-specific departures may occur by either an order under paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved for these processes would be the same as for paragraph VIII.C.1 previously discussed. If the technical specifications or operational requirement was comprehensively reviewed and finalized in the design certification rule, then the NRC must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there would be no restriction on plant-specific changes to the technical specifications or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed and approved by the NRC in support of the design certification review, the NRC intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement contained in paragraph VIII.C.5 would be similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present pursuant to § 2.335.

Paragraph VIII.C.6 states that the generic technical specifications would have no further effect on the plant-

specific technical specifications after the issuance of a license that references this appendix and the change process. After a license is issued, the bases for the plant-specific technical specification would be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

#### I. [RESERVED] (Section IX)

This section is reserved for future use. The matters discussed in this section of earlier design certification rules—inspections, tests, analyses, and acceptance criteria—are now addressed in the substantive provisions of 10 CFR part 52. Accordingly, there is no need to repeat these regulatory provisions in the NuScale design certification rule. However, this section is being reserved to maintain consistent section numbering with other design certification rules.

#### J. Records and Reporting (Section X)

The purpose of Section X of appendix G to 10 CFR part 52 is to set forth the requirements that will apply to maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of appendix G to 10 CFR part 52 is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 requires that a generic DCD including referenced SUNSI and SGI be maintained by the applicant for this proposed rule. The generic DCD concept was developed, in part, to meet the requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the SUNSI and SGI could not be included in the generic DCD because they are not publicly available. Nonetheless, the SUNSI and SGI were reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC would consider the information to be resolved within the meaning of § 52.63(a)(5). Because this information, or its equivalent, is not in the generic DCD, it is required to be provided by an applicant for a license referencing this design certification rule. Only the generic DCD is identified and incorporated by reference into this rule. The generic DCD and the NRC approved version of the SUNSI and SGI must be maintained by the applicant (NuScale Power) for the period of time that

appendix G to 10 CFR part 52 may be referenced.

Paragraphs X.A.2 and X.A.3 place recordkeeping requirements on the applicant or licensee that reference this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII. The term “plant-specific” is used in paragraph X.A.2 and other sections of appendix G to 10 CFR part 52 to distinguish between the generic DCD that would be incorporated by reference into appendix G to 10 CFR part 52, and the plant-specific DCD that the COL applicant is required to submit under paragraph IV.A. The requirement to maintain changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for the design certification, but also in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A.4.a requires the design certification rule applicant to maintain a copy of the aircraft impact assessment analysis for the term of the certification and any renewal. This provision, which is consistent with § 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct. Similarly, paragraph X.A.4.b requires an applicant or licensee who references appendix G to 10 CFR part 52 to maintain a copy of the aircraft impact assessment performed to comply with the requirements of § 50.150(a) throughout the pendency of the application and for the term of the license and any renewal. This provision is consistent with § 50.150(c)(4). For all applicants and licensees, the supporting documentation retained should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in § 50.150(a)(1) will be met.

Paragraph X.A does not place recordkeeping requirements on site specific information that is outside the scope of this rule. As discussed in paragraph V.B of this document, the final safety analysis report required by § 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase “site specific portion of the final safety analysis report” in paragraph X.B.3.c refers to the information that is contained in the final safety analysis report for a facility

(required by § 52.79), but is not part of the plant-specific DCD (required by paragraph IV.A). Therefore, this proposed rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule because the plant-specific DCD is part of the final safety analysis report for the facility.

Paragraph X.B.1 requires applicants or licensees that reference this rule to submit reports that describe departures from the DCD and include a summary of the written evaluations. The requirement for the written evaluations is set forth in paragraph X.A.3. The frequency of the report submittals is set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations will be similar to the requirement in § 50.59(d)(2).

Paragraph X.B.2 requires applicants or licensees that reference this rule to submit updates to the DCD, which include both generic changes and plant-specific departures, as set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting reports will vary according to certain time periods during a facility’s lifetime. If a potential applicant for a COL that references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph X.B.3.a will require that the updated DCD be submitted as part of the initial application for a license. Under paragraph X.B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year.

Paragraph X.B.3.b also requires semi-annual submission of the reports required by paragraphs X.B.1 and X.B.2 throughout the period of application review and construction. The NRC will use the information in the reports to support planning for the NRC’s inspection and oversight during this phase, when the licensee is conducting detailed design, procurement of components and equipment, construction, and preoperational testing. In addition, the NRC will use the information in making its finding on ITAAC under § 52.103(g), as well as any finding on interim operation under Section 189.a(1)(B)(iii) of the Atomic Energy Act of 1954, as amended. Once a facility begins operation (for a COL under 10 CFR part 52, after the Commission has made a finding under § 52.103(g)), the frequency of reporting will be governed by the requirements in paragraph X.B.3.c.

## VI. Section-by-Section Analysis

The following paragraphs describe the specific changes of this proposed rule:

*Section 52.11, Information collection requirements: Office of Management and Budget (OMB) approval.*

In § 52.11, this proposed rule would add new appendix G to 10 CFR part 52 to the list of information collection requirements in paragraph (b) of this section.

*Appendix G to Part 52—Design Certification Rule for the NuScale Standard Design*

This proposed rule would add appendix G to 10 CFR part 52 to incorporate the NuScale standard design into the NRC's regulations. Applicants intending to construct and operate a plant using NuScale may do so by referencing the design certification rule.

## VII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

## VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are NRC approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses. Furthermore, design certification rules are requested by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the NRC concludes that preparation of a regulatory analysis is neither required nor appropriate.

## IX. Backfitting and Issue Finality

The NRC has determined that this proposed rule does not constitute a

backfit as defined in the backfit rule (§ 50.109), and that it is not inconsistent with any applicable issue finality provision in 10 CFR part 52.

This initial design certification rule does not constitute backfitting as defined in the backfit rule (§ 50.109) because there are no operating licenses under 10 CFR part 50 referencing this design certification proposed rule.

This initial design certification rule is not inconsistent with any applicable issue finality provision in 10 CFR part 52 because it does not impose new or changed requirements on existing design certification rules in appendices A through F to 10 CFR part 52, and no combined licenses, construction permits, or manufacturing licenses issued by the NRC at this time reference this design certification proposed rule.

For these reasons, neither a backfit analysis nor a discussion addressing the issue finality provisions in 10 CFR part 52 was prepared for this proposed rule.

## X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

## XI. Environmental Assessment and Finding of No Significant Impact

The NRC conducted an environmental assessment (ADAMS Accession No. ML19303C179) and has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC's regulations in subpart A of 10 CFR part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC's generic determination in this regard is reflected in § 51.32(b)(1). The Commission has determined in § 51.32 that there is no significant environmental impact associated with the issuance of a standard design certification or a design certification amendment, as applicable. Comments on the environmental assessment will be limited to the consideration of severe accident mitigation design alternatives as required by § 51.30(d).

The basis for the NRC's categorical exclusion in this regard, as discussed in the 2007 final rule amending 10 CFR parts 51 and 52 (72 FR 49352; August 28, 2007), is based upon consideration that a design certification rule does not authorize the siting, construction, or operation of a facility referencing any particular design; it only codifies the NuScale design in a rule. The NRC will evaluate the environmental impacts and issue an environmental impact statement as appropriate under NEPA as part of the application for the construction and operation of a facility referencing any particular DC rule.

Consistent with § 51.30(d) and § 51.32(b), the NRC has prepared an environmental assessment (ADAMS Accession No. ML19303C179) for the NuScale design addressing various design alternatives to prevent and mitigate severe accidents. The environmental assessment is based, in part, upon the NRC's review of NuScale Power's evaluation of various design alternatives to prevent and mitigate severe accidents in Revision 5 of the DCA Part 3, "Application Applicant's Environmental Report—Standard Design Certification" (ADAMS Accession No. ML20224A512). Based on a review of NuScale Power's evaluation, the NRC concludes that: (1) NuScale Power identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the NuScale design and (2) none of the potential design alternatives appropriate at the design certification stage are justified on the basis of cost-benefit considerations. These issues are considered resolved for the NuScale design.

Based on its own independent evaluation, the NRC concluded that none of the possible candidate design alternatives appropriate at this design certification stage are potentially cost beneficial for NuScale for accident events. This independent evaluation was based on reasonable treatment of costs, benefits, and sensitivities. The NRC's conclusion is applicable for sites with site characteristics that fall within those site parameters specified in the NuScale environmental report. The NRC concludes that NuScale Power has adequately identified areas appropriate at this design certification stage where risk potentially could be reduced in a cost beneficial manner and that NuScale Power has adequately assessed whether the implementation of the identified potential severe accident mitigation design alternatives (SAMDAs) or candidate design alternatives would be cost beneficial for the given site parameters. Site-specific SAMDAs,

multi-unit aspects, procedural and training SAMDAs, and the reactor building crane design would need to be assessed when a specific site is proposed for constructing and operating a NuScale power plant.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The environmental assessment is available as indicated under Section XV of this proposed rule.

## XII. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed rule has been submitted to the OMB for review and approval of the information collections.

*Type of submission:* Revision.

*The title of the information collection:* Appendix G to 10 CFR part 52 Design Certification Rule for NuScale.

*The form number if applicable:* NA.

*How often the collection is required or requested:* On occasion

*Who will be required or asked to respond:* Applicant for a combined license, construction permit, or a design certification amendment.

*An estimate of the number of annual responses:* 5 (2 annual responses and 3 recordkeepers).

*The estimated number of annual respondents:* 3.

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 389 hours (346 reporting hours + 43 recordkeeping hours).

*Abstract:* The NRC is proposing to amend its regulations to certify the NuScale standard design. This action is necessary so that applicants or licensees intending to construct and operate an NuScale standard design may do so by referencing this design certification rule. The applicant for certification of the NuScale standard design is NuScale Power, LLC.

The NRC is seeking public comment on the potential impact of the information collection contained in this proposed rule and on the following issues:

(1) Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

(2) Is the estimate of the burden of the proposed information collection accurate?

(3) Is there a way to enhance the quality, utility, and clarity of the information to be collected?

(4) How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package is available in ADAMS under Accession No. ML20242A000 or can be obtained free of charge by contacting the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov). You may obtain information and comment submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC-2017-0029.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0029.

- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0151), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

Additionally, this proposed rule provides procedures for requesting access to proprietary and safeguards information for preparation of comments on the NuScale design certification proposed rule. These procedures are guidance for completing mandatory information collections located in 10 CFR parts 9 and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collections were approved by OMB under approval numbers 3150-0043 and 3150-0002. Send comments regarding this information collection to the FOIA, Library, and Information Collections Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, or by email to [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov), and to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0043 and 3150-0002), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

Submit comments by August 30, 2021. Comments received after this date will be considered if it is practical to do

so, but the NRC is able to ensure consideration only for comments received on or before this date.

## Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

## XIII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this proposed rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with a particular State's administrative procedure laws, but does not confer regulatory authority on the State.

## XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC intends to certify the NuScale standard design for use in nuclear power plant licensing under 10 CFR parts 50 or 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## XV. Availability of Documents

The documents identified in the following table are available to

interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
SECY-21-0004, "Proposed Rule: NuScale Small Modular Reactor Design Certification (RIN 3150-AJ98; NRC-2017-0029)" ....	ML19353A003
Staff Requirements Memorandum for SECY-21-0004, "Proposed Rule: NuScale Small Modular Reactor Design Certification (RIN 3150-AJ98; NRC-2017-0029)" .....	ML21126A153
NuScale Power, LLC Submittal of the NuScale Standard Plant Design Certification Application (NRC Project No. 0769) (December 2016) .....	ML17013A229
NuScale Power, LLC Submittal of the NuScale Standard Plant Design Certification Application, Revision 5 (July 2020) .....	ML20225A071
NuScale DCA Final Safety Evaluation Reports (August 2020) .....	ML20023A318
NuScale Standard Design Certification Application, Part 3, "Applicant's Environmental Report—Standard Design Certification," Revision 5 (July 2020) .....	ML20224A512
Environmental Assessment by the U.S. Nuclear Regulatory Commission Relating to the Certification of the NuScale Standard Design .....	ML19303C179
Regulatory History of Design Certification (April 2000) <sup>2</sup> .....	ML003761550
<i>NuScale Technical and Topical Reports</i>	
ES-0304-1381-NP, Human-System Interface Style Guide, Rev. 4 (December 2019) .....	ML19338E948
RP-0215-10815-NP, Concept of Operations, Rev. 3 (May 2019) .....	ML19133A293
RP-0316-17614-NP, Human Factors Engineering Operating Experience Review Results Summary Report, Rev. 0 (December 2016) .....	ML16364A342
RP-0316-17615-NP, Human Factors Engineering Functional Requirements Analysis and Function Allocation Results Summary Report, Rev. 0 (December 2016) .....	ML16364A342
RP-0316-17616-NP, Human Factors Engineering Task Analysis Results Summary Report, Rev. 2 (April 2019) .....	ML19119A393
RP-0316-17617-NP, Human Factors Engineering Staffing and Qualifications Results Summary Report, Rev. 0 (December 2016) .....	ML17004A222
RP-0316-17618-NP, Human Factors Engineering Treatment of Important Human Actions Results Summary Report, Rev. 0 (December 2016) .....	ML17004A222
RP-0316-17619-NP, Human Factors Engineering Human-System Interface Design Results Summary Report, Rev. 2, (April 2019) .....	ML19119A398
RP-0516-49116-NP, Control Room Staffing Plan Validation Results, Rev. 1 (December 2016) .....	ML16364A356
RP-0914-8534-NP, Human Factors Engineering Program Management Plan, Rev. 5 (April 2019) .....	ML19119A342
RP-0914-8543-NP, Human Factors Verification and Validation Implementation Plan, Rev. 5 (April 2019) .....	ML19119A372
RP-0914-8544-NP, Human Factors Engineering Design Implementation Implementation Plan, Rev. 4 (November 2019) .....	ML19331A910
RP-1018-61289-NP, Human Factors Engineering Verification and Validation Results Summary Report, Rev. 1 (July 2019) .....	ML19212A773
RP-1215-20253-NP, Control Room Staffing Plan Validation Methodology, Rev. 3 (December 2016) .....	ML16364A353
TR-0116-20781-NP, Fluence Calculation Methodology and Results, Rev. 1 (July 2019) .....	ML19183A485
TR-0116-20825-NP-A, Applicability of AREVA Fuel Methodology for the NuScale Design, Rev. 1 (February 2018) .....	ML18040B306
TR-0116-21012-NP-A, NuScale Power Critical Heat Flux Correlations, Rev. 1 (December 2018) .....	ML18360A632
TR-0316-22048-NP, Nuclear Steam Supply System Advanced Sensor Technical Report, Rev. 3 (May 2020) .....	ML20141M764
TR-0515-13952-NP-A, Risk Significance Determination, Rev. 0 (October 2016) .....	ML16284A016
TR-0516-49084-NP, Containment Response Analysis Methodology Technical Report, Rev. 3 (May 2020) .....	ML20141L808
TR-0516-49416-NP-A, Non-Loss-of-Coolant Accident Analysis Methodology, Rev. 3 (July 2020) .....	ML20191A281
TR-0516-49417-NP-A, Evaluation Methodology for Stability Analysis of the NuScale Power Module, Rev. 1 (March 2020) .....	ML20078Q094
TR-0516-49422-NP-A, Loss-of-Coolant Accident Evaluation Model, Rev. 2 (July 2020) .....	ML20189A644
TR-0616-48793-NP-A, Nuclear Analysis Codes and Methods Qualification, Rev. 1 (December 2018) .....	ML18348B036
TR-0616-49121-NP, NuScale Instrument Setpoint Methodology Technical Report, Rev. 3 (May 2020) .....	ML20141M114
TR-0716-50350-NP-A, Rod Ejection Accident Methodology, Rev. 1 (June 2020) .....	ML20168B203
TR-0716-50351-NP-A, NuScale Applicability of AREVA Method for the Evaluation of Fuel Assembly Structural Response to Externally Applied Forces, Rev. 1 (May 2020) .....	ML20122A248
TR-0716-50424-NP, Combustible Gas Control, Rev. 1 (March 2019) .....	ML19091A232
TR-0716-50439-NP, NuScale Comprehensive Vibration Assessment Program Analysis Technical Report, Rev. 2 (July 2019) ...	ML19212A776
TR-0815-16497-NP-A, Safety Classification of Passive Nuclear Power Plant Electrical Systems Topical Report, Rev. 1 (February 2018) .....	ML18054B607
TR-0816-49833-NP, Fuel Storage Rack Analysis, Rev. 1 (November 2018) .....	ML18310A154
TR-0816-50796-NP, Loss of Large Areas Due to Explosions and Fires Assessment, Rev. 1 (June 2019) .....	ML19165A294
TR-0816-50797 (NuScale Nonproprietary), Mitigation Strategies for Loss of All AC Power Event, Rev. 3 (October 2019) .....	ML19302H598
TR-0816-51127-NP, NuFuel-HTP2™ Fuel and Control Rod Assembly Designs, Rev. 3 (December 2019) .....	ML19353A719
TR-0818-61384-NP, Pipe Rupture Hazards Analysis, Rev. 2 (July 2019) .....	ML19212A682
TR-0915-17564-NP-A, Subchannel Analysis Methodology, Rev. 2 (March 2019) .....	ML19067A256
TR-0915-17565-NP-A, Accident Source Term Methodology, Rev. 4 (February 2020) .....	ML20057G132
TR-0916-51299-NP, Long-Term Cooling Methodology, Rev. 3 (May 2020) .....	ML20141L816
TR-0916-51502-NP, NuScale Power Module Seismic Analysis, Rev. 2 (April 2019) .....	ML19093B850
TR-0917-56119-NP, CNV Ultimate Pressure Integrity, Rev. 1 (June 2019) .....	ML19158A382
TR-0918-60894-NP, Comprehensive Vibration Assessment Program Measurement and Inspection Plan Technical Report, Rev. 1 (August 2019) .....	ML19214A248
TR-1010-859-NP-A, NuScale Topical Report: Quality Assurance Program Description for the NuScale Power Plant, Rev. 5 (June 2020) .....	ML20176A494
TR-1015-18177-NP, Pressure and Temperature Limits Methodology, Rev. 2 (October 2018) .....	ML18298A304
TR-1015-18653-NP-A, Design of the Highly Integrated Protection System Platform Topical Report, Rev. 2 (September 2017) .....	ML17256A892
TR-1016-51669-NP, NuScale Power Module Short-Term Transient Analysis, Rev. 1 (July 2019) .....	ML19211D411
TR-1116-51962-NP, NuScale Containment Leakage Integrity Assurance Technical Report, Rev. 1 (May 2019) .....	ML19149A298

Document	ADAMS accession No.
TR-1116-52065-NP, Effluent Release (GALE Replacement) Methodology and Results, Rev. 1 (November 2018) .....	ML18317A364

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2017-0029.

#### **XVI. Procedures for Access to Proprietary and Safeguards Information for Preparation of Comments on the NuScale Design Certification Proposed Rule**

This section contains instructions regarding how the non-publicly available documents related to this rule, and specifically those listed in Table 1.6-1 and 1.6-2 beginning on page 1.6-2 of Tier 2 of the DCD, may be accessed by interested persons who wish to comment on the design certification. These documents contain proprietary information and safeguards information (SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This section provides information specific to this proposed rule; however, nothing in this section is intended to conflict with the SGI regulations.

Interested persons who desire access to proprietary information on NuScale should first request access to that information from NuScale Power, LLC, the design certification applicant. Requests to the applicant must be sent to NuScale Power, LLC, at [RegulatoryAffairs@NuScalePower.com](mailto:RegulatoryAffairs@NuScalePower.com). A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described in the following section.

One of the non-publicly available documents, TR-0416-48929, "NuScale Design of Physical Security Systems," contains both proprietary information and SGI. If you need access to proprietary information in that document in order to develop comments within the scope of this rule, then your request for access should first be submitted to NuScale Power, in accordance with the previous paragraph. By contrast, if you need access to the SGI in order to provide comments, then your request for access

<sup>2</sup> The regulatory history of the NRC's design certification reviews is a package of documents that is available in the NRC's PDR and NRC Library. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

to the SGI must be submitted to the NRC as described further in this section. Therefore, if you need access to both proprietary information and SGI in that document, then you should request access to the information in separate requests submitted to both NuScale Power and the NRC.

#### *Submitting a Request to the NRC for Access*

Within 10 days after publication of this proposed rule, any individual or entity who believes access to proprietary information or SGI is necessary in order to submit comments on this proposed rule may request access to such information. Requests for access to proprietary information or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requestor shall submit a letter requesting permission to access proprietary information and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. The email address for the Office of the Secretary is [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). The requestor must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Requests to the applicant must be sent to NuScale Power, LLC, at [RegulatoryAffairs@NuScalePower.com](mailto:RegulatoryAffairs@NuScalePower.com).

The request must include the following information:

(1) The name of this design certification, NuScale Design Certification; the rulemaking identification number, RIN 3150-AJ98; the rulemaking docket number, NRC-2017-0029; and the **Federal Register** citation for this rule.

(2) The name and address of the requester.

(3) The identity of the individual(s) to whom access is to be provided, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the information.

(4) If the request is for proprietary information, the requestor's need for the information in order to prepare meaningful comments on the design certification must be demonstrated.

Each of the following areas must be addressed with specificity:

(a) The specific issue or subject matter on which the requester wishes to comment.

(b) An explanation why information which is publicly available is insufficient to provide the basis for developing meaningful comment on the NuScale design certification proposed rule with respect to the issue or subject matter described in paragraph 4.a. of this section.

(c) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested proprietary information to provide the basis for meaningful comment. Technical competence may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(d) A chronology and discussion of the requestor's attempts to obtain the information from the design certification applicant, and the final communication from the requestor to the applicant and the applicant's response, if any was provided, with respect to the request for access to proprietary information must be submitted.

(5) If the request is for SGI, the request must include the following:

(a) A statement that explains each individual's "need to know" the SGI, as required by §§ 73.2 and 73.22(b)(1). Consistent with the definition of "need to know" as stated in § 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;<sup>3</sup> and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for meaningful comment. Technical competence may be shown by reliance

<sup>3</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this document do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.



on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and § 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can be submitted only electronically through the Electronic Questionnaires for Investigations Processing website, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301-415-3710.<sup>4</sup>

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with § 73.57(d). Copies of Form FD-258 may be obtained by sending an email to [MAILSVC.Resource@nrc.gov](mailto:MAILSVC.Resource@nrc.gov) or by sending a written request to U.S. Nuclear Regulatory Commission, Attn: Mailroom/Fingerprint Card Request, 11555 Rockville Pike, Rockville, MD 20852. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, § 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order in the amount of \$326.00<sup>5</sup> payable to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted; and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements, as stated in § 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking, and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final

determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs (5)(b), (c), and (d), of this section must be sent to the following address: U.S. Nuclear Regulatory Commission, ATTN: Personnel Security Branch, Mail Stop TWFN-07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

Based on an evaluation of the information submitted under paragraphs (4) or (5) of this section, as applicable, the NRC will determine within 10 days of receipt of the request whether the requestor has established a legitimate need for access to proprietary information or need to know the SGI requested.

#### *Determination of Legitimate Need for Access*

For proprietary information access requests, if the NRC determines that the requestor has established a legitimate need for access to proprietary information, the NRC will notify the requestor in writing that access to proprietary information has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit by each individual who will be granted access.

For requests for access to SGI, if the NRC determines that the requestor has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the

proposed recipient is trustworthy and reliable, as required for access to SGI by § 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit by each individual who will be granted access to SGI.

#### *Release and Storage of SGI*

Prior to providing SGI to the requestor, the NRC will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of § 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

#### *Filing of Comments on the NuScale Design Certification Proposed Rule Based on Non-Public Information*

Any comments in this rulemaking proceeding that are based upon the information received as a result of the request made for proprietary or SGI information must be filed by the requestor no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with all NRC requirements regarding the submission of proprietary information and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

#### *Review of Denials of Access*

If the request for access to proprietary information or SGI is denied by the NRC, either after a determination on requisite need or after a determination on trustworthiness and reliability, the NRC shall promptly notify the requestor in writing, briefly stating the reason or reasons for the denial.

Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with § 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under § 73.57(e)(1), so that the proposed

<sup>4</sup> The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

<sup>5</sup> This fee is subject to change pursuant to DCSA's adjustable billing rates.

recipient(s) have an opportunity to correct or explain the record.

The requestor may challenge the NRC's adverse determination with respect to access to proprietary information or with respect to need to know for SGI by filing a challenge within 5 days of receipt of that determination with the NRC's Executive Director for Operations under § 9.29(d).

The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with § 2.336(f)(1)(iv).

### **XVII. Incorporation by Reference—Reasonable Availability to Interested Parties**

The NRC proposes to incorporate by reference the NuScale DCA, Revision 5. As described in the "Discussion" sections of this document, the generic DCD includes Tier 1 and Tier 2 information (including the technical and topical reports referenced in Chapter 1) and generic technical specifications in order to effectively control this information and facilitate its incorporation by reference into the rule. NuScale Power submitted Revision 5 of the DCA to the NRC in July 2020.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency incorporates by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for a proposed rule as set forth in 1 CFR 51.5(a)(1).

The NRC considers "interested parties" to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for the purposes of determining whether the material is "reasonably available." The NRC considers the following to be classes of interested parties in NRC rulemakings with regard to the material to be incorporated by reference:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants or licensees and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, "small entities" has the same meaning as a "small entity" under § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, "large entities" are those which do not qualify as a "small entity" under § 2.810.
- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, States, and local governmental bodies (within the meaning of § 2.315(c)).
- Federally-recognized and State-recognized<sup>6</sup> Indian tribes.
- Members of the general public (*i.e.*, individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who may wish to gain access to the materials which the NRC incorporates by reference by rulemaking in order to participate in the rulemaking process.

The NRC makes the materials incorporated by reference available for inspection to all interested parties, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301-415-7000; email: [Library.Resource@nrc.gov](mailto:Library.Resource@nrc.gov). In addition, as described in Section XV of this proposed rule, documents related to this proposed rule are available online in the NRC's ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>.

The NRC concludes that the materials the NRC is incorporating by reference in this proposed rule are reasonably available to all interested parties because the materials are available in multiple ways and in a manner consistent with their interest in the materials.

<sup>6</sup> State-recognized Indian tribes are not within the scope of 10 CFR 2.315(c). However, for purposes of the NRC's compliance with 1 CFR 51.5, "interested parties" includes a broad set of stakeholders, including State-recognized Indian tribes.

### **List of Subjects in 10 CFR Part 52**

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC proposes the following amendments to 10 CFR part 52:

### **PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS**

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

**Authority:** Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

#### **§ 52.11 [Amended]**

- 2. In § 52.11(b), add "G," in alphabetical order to the list of appendices.
- 3. Add Appendix G to part 52 to read as follows:

### **Appendix G to Part 52—Design Certification Rule for NuScale**

#### **I. Introduction**

Appendix G constitutes the standard design certification for NuScale, in accordance with 10 CFR part 52, subpart B. The applicant for the standard design certification of NuScale is NuScale Power, LLC.

#### **II. Definitions**

A. *Generic design control document (generic DCD)* means the document containing the Tier 1 and Tier 2 information (including the technical and topical reports referenced in Chapter 1) and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications (generic TS)* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means that portion of the combined license (COL) final safety analysis report (FSAR) that sets forth both the generic DCD information and any plant-specific changes to generic DCD information.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1.

Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix G. Regardless of these differences, an applicant or licensee must meet the requirement in paragraph III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by § 52.47(a) and (c), with the exception of generic TS and conceptual design information;
2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
3. COL action items (COL license information) identify certain matters that must be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or
2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

G. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

### III. Scope and Contents

A. Incorporation by reference approval. NuScale standard design (hereafter referred as NuScale) material is approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51,

“Incorporation by Reference.” You may obtain copies of the generic DCD from NuScale Power, LLC, 6650 SW Redwood Lane, Suite 210, Portland, Oregon 97224. You can view the generic DCD online in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html>. In ADAMS, search under ADAMS Accession No. ML20225A071. If you do not have access to ADAMS or if you have problems accessing documents located in ADAMS, contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–3747, or by email at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). Copies of the NuScale materials are available in the ADAMS Public Documents collection. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email at [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibrlocations.html>.

1. NuScale Standard Plant Design Certification Application, Certified Design Descriptions and Inspections, Tests, Analyses, & Acceptance Criteria (ITAAC), Part 2—Tier 1, Revision 5, July 2020.
2. NuScale Standard Plant Design Certification Application, Part 2—Tier 2, Revision 5, July 2020, including:
  - a. Chapter One, Introduction and General Description of the Plant.
  - b. Chapter Two, Site Characteristics and Site Parameters.
  - c. Chapter Three, Design of Structures, Systems, Components and Equipment.
  - d. Chapter Four, Reactor.
  - e. Chapter Five, Reactor Coolant System and Connecting Systems.
  - f. Chapter Six, Engineered Safety Features.
  - g. Chapter Seven, Instrumentation and Controls.
  - h. Chapter Eight, Electric Power.
  - i. Chapter Nine, Auxiliary Systems.
  - j. Chapter Ten, Steam and Power Conversion System.
  - k. Chapter Eleven, Radioactive Waste Management.
  - l. Chapter Twelve, Radiation Protection.
  - m. Chapter Thirteen, Conduct of Operations.
  - n. Chapter Fourteen, Initial Test Program and Inspections, Tests, Analyses, and Acceptance Criteria.
  - o. Chapter Fifteen, Transient and Accident Analyses.
  - p. Chapter Sixteen, Technical Specifications.
  - q. Chapter Seventeen, Quality Assurance and Reliability Assurance.
  - r. Chapter Eighteen, Human Factors Engineering.
  - s. Chapter Nineteen, Probabilistic Risk Assessment and Severe Accident Evaluation.
  - t. Chapter Twenty, Mitigation of Beyond-Design-Basis Events.
  - u. Chapter Twenty-One, Multi-Module Design Considerations.
3. DCA Part 4, Volume 1, Revision 5.0, Generic Technical Specifications, NuScale Nuclear Power Plants, Volume 1: Specifications.
4. DCA Part 4, Volume 2, Revision 5.0, Generic Technical Specifications, NuScale Nuclear Power Plants, Volume 2: Bases.

5. ES–0304–1381–NP, Human-System Interface Style Guide, December 2019, Revision 4, Docket: 52–048.

6. RP–0215–10815–NP, Concept of Operations, May 2019, Revision 3, Docket: 52–048.

7. RP–0316–17614–NP, Human Factors Engineering Operating Experience Review Results Summary Report, 12/07/2016, Revision 0, Docket: PROJ0769.

8. RP–0316–17615–NP, Human Factors Engineering Functional Requirements Analysis and Function Allocation Results Summary Report, 12/2/16, Revision 0, Docket: PROJ0769.

9. RP–0316–17616–NP, Human Factors Engineering Task Analysis Results Summary Report, April 2019, Revision 2, Docket: 52–048.

10. RP–0316–17617–NP, Human Factors Engineering Staffing and Qualifications Results Summary Report, 12/02/2016, Revision 0, Docket: PROJ0769.

11. RP–0316–17618–NP, Human Factors Engineering Treatment of Important Human Actions Results Summary Report, 12/02/2016, Revision 0, Docket: PROJ0769.

12. RP–0316–17619–NP, Human Factors Engineering Human-System Interface Design Results Summary Report, April 2019, Revision 2, Docket: 52–048.

13. RP–0516–49116–NP, Control Room Staffing Plan Validation Results, 12/02/2016, Revision 1, Docket: PROJ0769.

14. RP–0914–8534–NP, Human Factors Engineering Program Management Plan, April 2019, Revision 5, Docket: 52–048.

15. RP–0914–8543–NP, Human Factors Verification and Validation Implementation Plan, April 2019, Revision 5, Docket: 52–048.

16. RP–0914–8544–NP, Human Factors Engineering Design Implementation Implementation Plan, November 2019, Revision 4, Docket: 52–048, NuScale Nonproprietary.

17. RP–1018–61289–NP, Human Factors Engineering Verification and Validation Results Summary Report, July 2019, Revision 1, Docket: 52–048.

18. RP–1215–20253–NP, Control Room Staffing Plan Validation Methodology, 12/02/2016, Revision 3, Docket: PROJ0769.

19. TR–0116–20781–NP, Fluence Calculation Methodology and Results, July 2019, Revision 1, Docket: 52–048.

20. TR–0116–20825–NP–A, Applicability of AREVA Fuel Methodology for the NuScale Design, June 2016, Revision 1, Docket: PROJ0769.

21. TR–0116–21012–NP–A, NuScale Power Critical Heat Flux Correlations, December 2018, Revision 1, Docket: PROJ0769.

22. TR–0316–22048–NP, Nuclear Steam Supply System Advanced Sensor Technical Report, May 2020, Revision 3, Docket: 52–048.

23. TR–0515–13952–NP–A, Risk Significance Determination, October 2016, Revision 0, Docket: PROJ0769, NuScale Nonproprietary.

24. TR–0516–49084–NP, Containment Response Analysis Methodology Technical Report, May 2020, Revision 3, Docket: 52–048.

25. TR–0516–49416–NP–A, Non-Loss-of-Coolant Accident Analysis Methodology, July 2020, Revision 3, Docket: PROJ0769.

26. TR-0516-49417-NP-A, Evaluation Methodology for Stability Analysis of the NuScale Power Module, March 2020, Revision 1, Docket: PROJ0769.

27. TR-0516-49422-NP-A, Loss-of-Coolant Accident Evaluation Model, July 2020, Revision 2, Docket: PROJ0769.

28. TR-0616-48793-NP-A, Nuclear Analysis Codes and Methods Qualification, November 2018, Revision 1, Docket: PROJ0769.

29. TR-0616-49121-NP, NuScale Instrument Setpoint Methodology Technical Report, May 2020, Revision 3, Docket: 52-048.

30. TR-0716-50350-NP-A, Rod Ejection Accident Methodology, June 2020, Revision 1, Docket: PROJ0769.

31. TR-0716-50351-NP-A, NuScale Applicability of AREVA Method for the Evaluation of Fuel Assembly Structural Response to Externally Applied Forces, April 2020, Revision 1, Docket: PROJ0769.

32. TR-0716-50424-NP, Combustible Gas Control, March 2019, Revision 1, Docket: PROJ0769.

33. TR-0716-50439-NP, NuScale Comprehensive Vibration Assessment Program Analysis Technical Report, July 2019, Revision 2, Docket: 52-048.

34. TR-0815-16497-NP-A, Safety Classification of Passive Nuclear Power Plant Electrical Systems, January 2018, Revision 1, Docket: PROJ0769.

35. TR-0816-49833-NP, Fuel Storage Rack Analysis, November 2018, Revision 1, Docket: 52-048.

36. TR-0816-50796-NP, Loss of Large Areas Due to Explosions and Fires Assessment, June 2019, Revision 1, Docket: 52-048.

37. TR-0816-50797, Mitigation Strategies for Loss of All AC Power Event, October 2019, Revision 3, Docket: 52-048, NuScale Nonproprietary.

38. TR-0816-51127-NP, NuFuel-HTP2™ Fuel and Control Rod Assembly Designs, December 2019, Revision 3, Docket: 52-048.

39. TR-0818-61384-NP, Pipe Rupture Hazards Analysis, July 2019, Revision 2, Docket No.: 52-048.

40. TR-0915-17564-NP-A, Subchannel Analysis Methodology, February 2019, Revision 2, Docket: PROJ0769.

41. TR-0915-17565-NP-A, Accident Source Term Methodology, February 2020, Revision 4, Docket: PROJ0769.

42. TR-0916-51299-NP, Long-Term Cooling Methodology, May 2020, Revision 3, Docket: 52-048.

43. TR-0916-51502-NP, NuScale Power Module Seismic Analysis, April 2019, Revision 2, Docket: 52-048.

44. TR-0917-56119-NP, CNV Ultimate Pressure Integrity, June 2019, Revision 1, Docket No. 52-048.

45. TR-0918-60894-NP, NuScale Comprehensive Vibration Assessment Program Measurement and Inspection Plan Technical Report, August 2019, Revision 1, Docket No.: 52-048.

46. NP-TR-1010-859-NP-A, NuScale Topical Report: Quality Assurance Program Description for the NuScale Power Plant, May 2020, Revision 5, Docket: PROJ0769, NuScale Nonproprietary.

47. TR-1015-18177-NP, Pressure and Temperature Limits Methodology, October 2018, Revision 2, Docket: 52-048.

48. TR-1015-18653-NP-A, Design of the Highly Integrated Protection System Platform, May 2017, Revision 2, Docket: PROJ0769.

49. TR-1016-51669-NP, NuScale Power Module Short-Term Transient Analysis, July 2019, Revision 1, Docket: 52-048.

50. TR-1116-51962-NP, NuScale Containment Leakage Integrity Assurance, May 2019, Revision 1, Docket: 52-048.

51. TR-1116-52065-NP, Effluent Release (GALE Replacement) Methodology and Results, November 2018, Revision 1, Docket: 52-048.

B.1. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix except as otherwise provided in this appendix.

2. Conceptual design information, as set forth in the design certification application Part 2, Tier 2, Section 1.2, and the discussion of “first principles” contained in design certification application Part 2, Tier 2, Section 14.3.2 are not incorporated by reference into this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for the design certification of NuScale or the final safety evaluation report related to certification of the NuScale standard design, then the generic DCD controls.

E. Design activities for structures, systems, and components that are entirely outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

#### IV. Additional Requirements and Restrictions

A. An applicant for a COL that wishes to reference this appendix shall, in addition to complying with the requirements of §§ 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for NuScale, either by including or incorporating by reference the generic DCD information, and as modified and supplemented by the applicant’s exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating that the site characteristics fall within the site parameters and that the interface requirements have been met;

e. Information that addresses the COL action items;

f. Information required by § 52.47(a) that is not within the scope of this appendix;

g. Information demonstrating that necessary shielding to limit radiological dose consistent with the radiation zones specified in design certification application Part 2, Tier 2, Chapter 12, Figure 12.3-1, “Reactor Building Radiation Zone Map,” is provided to account for penetrations in the radiation shield wall between the power module bay and the reactor building steam gallery area;

h. Information demonstrating that the requirements of 10 CFR 50.34(f)(2)(xxviii) are met with respect to potential radiological releases under accident conditions from the systems used for post-accident hydrogen and oxygen monitoring described in design certification application Part 2, Tier 2, Section 6.2.5; information demonstrating that post-accident leakage from these systems does not result in the total main control room dose exceeding the dose criteria for the surrogate event with significant core damage, which may include use of design features compliant with 10 CFR 50.34(f)(2)(vii), as appropriate; and information demonstrating that post-accident leakage from these systems does not result in the total dose for the surrogate event with significant core damage exceeding the offsite dose criteria, as required by 10 CFR 52.47(a)(2)(iv); and

i. Information demonstrating that the criteria of 10 CFR part 20 and the requirements of 10 CFR part 50, appendix A, General Design Criterion (GDC) 4 and GDC 31 are met with respect to the structural and leakage integrity of the steam generator tubes that might be compromised by effects from density wave oscillations in the secondary fluid system, including the method of analysis to predict the thermal-hydraulic conditions of the steam generator secondary fluid system and resulting loads, stresses, and deformations from density wave oscillations and reverse flow. This information must be consistent with the other design information regarding steam generator integrity contained in design certification application Part 2, Tier 2, Sections 3.9.2 and 5.4.1.

3. Include, in the plant-specific DCD, the sensitive, unclassified, non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the NuScale generic DCD.

4. Include, as part of its application, a demonstration that an entity other than NuScale Power, LLC, is qualified to supply the NuScale generic DCD, unless NuScale Power, LLC, supplies the design for the applicant’s use.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

#### V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to NuScale are in 10 CFR parts 20, 50, 52, 73, and 100, codified as of [DATE 120 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register], that are applicable and technically relevant, as described in the final safety evaluation report.

B. The NuScale design is exempt from portions of the following regulations:

- 1. Paragraph (f)(2)(vi) of 10 CFR 50.34 and 10 CFR 50.46a—High point venting for the reactor coolant system and reactor pressure vessel head.
- 2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-accident sampling of the reactor coolant system and containment.
- 3. Paragraph (f)(2)(xiii) of 10 CFR 50.34—Power supplies for pressurizer heaters.
- 4. Paragraph (f)(2)(xiv)(E) of 10 CFR 50.34—Automatic closing of containment isolation systems on a high radiation signal.

- 5. Paragraph (f)(2)(xx) of 10 CFR 50.34—Power from vital buses and emergency power sources for pressurizer level indication.
- 6. Paragraph (c)(2) of 10 CFR 50.44—Combustible gas control.
- 7. Paragraph (a)(1)(i) of 10 CFR 50.46—Applicability limited to reactor designs that use zircaloy or ZIRLO fuel rod cladding material.
- 8. Paragraph (m) of 10 CFR 50.54—Minimum Staffing. In lieu of these requirements, a licensee that references this appendix must comply with the following:
  - a. A senior operator licensed pursuant to part 55 of this chapter shall be present at the

- facility or readily available on call at all times during its operation, and shall be present at the facility during initial startup and approach to power, recovery from an unplanned or unscheduled shutdown or significant reduction in power, and refueling, or as otherwise prescribed in the facility license.
  - b. Licensees shall meet the following requirements:
    - i. Each licensee shall meet the minimum licensed operator staffing requirements in the following table:

TABLE 1—MINIMUM REQUIREMENTS PER SHIFT FOR ON-SITE STAFFING OF NUSCALE POWER PLANTS BY OPERATORS AND SENIOR OPERATORS LICENSED UNDER 10 CFR PART 55

(a nuclear power unit is considered to be operating when it is in MODE 1, 2, or 3 as defined by the unit's technical specifications)	Position	One to twelve units
		One control room
None .....	Senior operator .....	1
	Operator .....	2
One to twelve .....	Senior operator .....	3
	Operator .....	3

Source: Design Certification Application, Part 7, Section 6.1.3, "Requested Action."

ii. Each facility licensee shall have at its site a person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit. At all times any module is fueled, regardless of Mode, there must be a licensed operator or senior operator in the control room.

iii. When a nuclear power unit is in MODE 1, 2, or 3, as defined by the unit's technical specifications, each licensee shall have a person holding a senior operator license for the nuclear power unit in the control room at all times. In addition to this senior operator, a second person who is either a licensed operator or licensed senior operator shall be present at the controls at all times. A third person who is either a licensed operator or licensed senior operator shall be in the control room envelope at all times.

iv. Each licensee shall have present, during alteration or movement of the core of a nuclear power unit (including fuel loading, fuel transfer, or movement of a module that contains fuel), a person holding a senior operator license or a senior operator license limited to fuel handling to directly supervise the activity and, during this time, the licensee shall not assign other duties to this person.

9. Paragraph (c)(1) of 10 CFR 50.62—Diverse equipment to initiate a turbine trip under conditions indicative of an anticipated transient without scram.

10. Appendix A of 10 CFR part 50—Electric Power Systems GDCs:

- a. GDC 17—Electric power systems for safety-related functions;
- b. GDC 18—Design to permit periodic inspection and testing of electric power systems;
- c. GDC 34—Electric power systems for residual heat removal;

d. GDC 35—Electric power systems for emergency core cooling;

e. GDC 38—Electric power systems for containment heat removal;

f. GDC 41—Electric power systems for containment atmosphere cleanup; and

g. GDC 44—Electric power systems for cooling.

11. Appendix A to 10 CFR part 50, GDC 19—Equipment outside the control room with capability for cold shutdown of the reactor.

12. Appendix A to 10 CFR part 50, GDC 27—Demonstration of long-term shutdown under post-accident conditions with an assumed worst rod stuck out.

13. Appendix A to 10 CFR part 50, GDC 33—Reactor coolant makeup for protection against small breaks in the reactor coolant pressure boundary.

14. Appendix A to 10 CFR part 50, GDC 40—Periodic pressure and functional testing of containment heat removal system.

15. Appendix A to 10 CFR part 50, GDC 52—Design to allow periodic containment leakage rate testing.

16. Appendix A of 10 CFR part 50, GDCs 55, 56, and 57—Containment Isolation:

- a. GDC 55—Isolation valves for certain reactor coolant pressure boundary lines penetrating containment;
- b. GDC 56—Isolation valves for certain primary containment lines; and
- c. GDC 57—Isolation valves for certain closed systems lines.

17. Appendix K to 10 CFR part 50—Emergency Core Cooling System Evaluation Models:

- a. Section I.A.4—Heat generation rates from radioactive decay of fission products;
- b. Section I.A.5—Rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction;

c. Section I.B—Predicting cladding swelling and rupture;

d. Section I.C.1.b—Calculation of the discharge rate for all times after the discharging fluid has been calculated to be two-phase;

e. Section I.C.5.a—Post-critical heat flux correlations of heat transfer from the fuel cladding to the surrounding fluid; and

f. Section I.C.7.a—Calculation of cross-flow between the hot and average channel regions of the core during blowdown.

**VI. Issue Resolution**

A. The Commission has determined that the structures, systems, and components and design features of NuScale comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, and components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for NuScale.

B. The Commission considers the following matters resolved within the meaning of § 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under § 52.103, and enforcement proceedings involving plants referencing this appendix:

- 1. All nuclear safety issues associated with the information in the final safety evaluation report, Tier 1, Tier 2, and the rulemaking record for certification of the NuScale design, with the exception of the following:
  - a. Generic TS and other operational requirements;

b. The adequacy of the design of the shield wall between the NuScale power module and the reactor building steam gallery to limit potential radiological doses consistent with the radiation zones specified in design certification application Part 2, Tier 2, Chapter 12, Figure 12.3-1, "Reactor Building Radiation Zone Map";

c. the adequacy of the design of the systems used for post-accident hydrogen and oxygen monitoring described in design certification application Part 2, Tier 2, Section 6.2.5 to meet the requirements of 10 CFR 50.34(f)(2)(vii), 10 CFR 50.34(f)(2)(xxviii), and 10 CFR 52.47(a)(2)(iv), with respect to radiological releases caused by leakage from these systems under accident conditions; and

d. the ability of the steam generator tubes to maintain structural and leakage integrity during density wave oscillations in the secondary fluid system, including the method of analysis to predict the thermal-hydraulic conditions of the steam generator secondary fluid system and resulting loads, stresses, and deformations from density wave oscillations and reverse flow, consistent with the other design information regarding steam generator integrity described in DCA Part 2, Tier 2, Sections 3.9.1, 3.9.2, 5.4.1, and 15.6.3, and in accordance with 10 CFR part 50, GDC 4, 10, and 31;

2. All nuclear safety and safeguards issues associated with the referenced information in the non-public documents in Tables 1.6-1 and 1.6-2 of Tier 2 of the DCD, which contain sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information and which, in context, are intended as requirements in the generic DCD for the NuScale design;

3. All generic changes to the DCD under and in compliance with the change processes in paragraphs VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in paragraphs VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.g of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant; and

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for NuScale (ADAMS Accession No. ML19303C179) and DCD Part 3, "Applicant's Environmental Report—Standard Design Certification," Revision 5, dated July 2020 (ADAMS Accession No. ML20224A512), for plants referencing this appendix whose site characteristics fall within those site parameters specified in the NuScale environmental report.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of

§ 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, and components or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, and components or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, and components or design features discussed in the generic DCD.

E. The NRC will specify, at an appropriate time, the procedures to be used by an interested person who wishes to review portions of the design certification or references containing safeguards information or sensitive unclassified non-safeguards information (including proprietary information, such as trade secrets and commercial or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR part 9), and security-related information), for the purpose of participating in the hearing required by § 52.85, the hearing provided under § 52.103, or in any other proceeding relating to this appendix, in which interested persons have a right to request an adjudicatory hearing.

## VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from October 29, 2021, except as provided for in §§ 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

## VIII. Processes for Changes and Departures

### A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in § 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in § 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in §§ 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

### B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in § 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, or B.5, of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order, while this appendix is in effect under § 52.55 or § 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The granting of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The granting of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, or the TS, or requires a license amendment under paragraph B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by § 52.47(a)(28) to address aircraft impacts, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a structure, system, or component important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of a structure, system, or component important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design-basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2, affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. A proposed departure from Tier 2 information required by § 52.47(a)(28) to address aircraft impacts shall consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by 10 CFR 50.150(a). The applicant or licensee shall describe, in the plant-specific DCD, how the modified design features and functional capabilities continue to meet the aircraft impact assessment requirements in 10 CFR 50.150(a)(1).

e. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

f. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

g. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under § 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to complying with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change stands on an asserted noncompliance with an ITAAC acceptance criterion in the case of a § 52.103 preoperational hearing, or that the change stands directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such

a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

### C. Operational Requirements

1. Changes to NuScale design certification generic TS and other operational requirements that were completely reviewed and approved in the design certification rule and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Changes to NuScale design certification generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances, as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. The granting of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for the issuance, amendment, or renewal of a license, or for operation under § 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed, may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of § 2.309 of this chapter and must either demonstrate why special circumstances as defined in § 2.335 of this chapter are present or demonstrate that the proposed change is necessary for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the licensing proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-

specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

## IX. [Reserved]

## X. Records and Reporting

### A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes that are made to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any periods of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any periods of renewal).

4.a. The applicant for NuScale shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any periods of renewal).

### B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each departure. This report must be filed in accordance with the filing requirements applicable to reports in § 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 50.71(e) and 52.3.

3. The reports and updates required by paragraphs X.B.1 and X.B.2 of this appendix must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.



b. During the interval from the date of application for a license to the date the Commission makes its finding required by § 52.103(g), the report must be submitted semiannually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by § 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated: June 25, 2021.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2021-13940 Filed 6-30-21; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

[NRC-2017-0090]

RIN 3150-AK04

### Advanced Boiling Water Reactor (ABWR) Design Certification Renewal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and environmental assessment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to renew the U.S. Advanced Boiling Water Reactor standard design certification.

Applicants or licensees intending to construct and operate a U.S. Advanced Boiling Water Reactor standard design may do so by referencing this design certification rule. The applicant for the renewal of the U.S. Advanced Boiling Water Reactor standard design certification is General Electric-Hitachi Nuclear Energy Americas, LLC. The NRC invites public comment on this proposed rule and environmental assessment.

**DATES:** Submit comments by August 2, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0090. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

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

#### FOR FURTHER INFORMATION CONTACT:

Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3561, email: [Dennis.Andrukat@nrc.gov](mailto:Dennis.Andrukat@nrc.gov), or James Shea, Office of Nuclear Reactor Regulation, telephone: 301-415-1388, email: [James.Shea@nrc.gov](mailto:James.Shea@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

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- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Voluntary Consensus Standards
- V. Plain Writing
- VI. Environmental Assessment and Final Finding of No Significant Impact
- VII. Paperwork Reduction Act Statement
- VIII. Availability of Documents

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0090 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-2017-0090.
- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at

301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Availability of Documents section.

- **Attention:** The **Public Document Room (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](mailto: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.

- **Attention:** The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at [Library.Resource@nrc.gov](mailto:Library.Resource@nrc.gov) between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

##### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0090 in your comment submission.

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

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

#### II. Rulemaking Procedure

Because the NRC anticipates that this action will be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on September 29, 2021. However, if the NRC receives significant adverse

comments on this proposed rule or environment assessment by August 2, 2021, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC would address the comments received in response to these proposed revisions in any subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC does not intend to initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment in which the commenter explains why the rule (including the environmental assessment) would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

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

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

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

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

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

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For additional information, including procedural information, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

### III. Background

The General Electric Company (GE) submitted the U.S. Advanced Boiling Water Reactor (U.S. ABWR) standard design certification initial application on September 29, 1987. The NRC initially docketed the application (Docket No. STN 50–605) on February 22, 1988, but later changed the docket number to 52–001 on March 20, 1992 (57 FR 9749) to reflect GE's request [or the applicant's request] to review the application under part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," of title 10 of the Code of Federal Regulations (10 CFR).

The NRC documented its review in NUREG–1503, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design," in July 1994 (ADAMS Accession No. ML080670592), and NUREG–1503, Supplement 1, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design," in May 1997 (ADAMS Accession No. ML080710134). The NRC issued the agency's first design certification (DC) rule, for the U.S. ABWR, in the **Federal Register** (62 FR 25800), effective June 11, 1997. In 2007, GE and Hitachi Nuclear Energy formed an alliance, and General Electric-Hitachi Nuclear Energy Americas, LLC, (GEH) became the entity retaining the U.S. ABWR design from GE.

On December 7, 2010, GEH submitted its application to renew the certification of the U.S. ABWR standard design to the NRC under subpart B, "Standard design certifications," to 10 CFR part 52. The NRC published a notice of receipt of the application in the **Federal Register** on January 27, 2011 (76 FR 4948). On February 18, 2011, the NRC formally accepted the design certification renewal application for docketing (76 FR 9612). The preapplication information submitted before the NRC formally accepted the application for docketing can be found in ADAMS under Docket No. PROJ0774.

Subpart B to 10 CFR part 52 presents the process for obtaining standard design certifications. Under § 52.57(a), an application for DC renewal must contain all information necessary to bring the information and data contained in the previous application up to date. Updates under § 52.57(a) include clarifications consistent with the original understanding of the design information, and changes to correct known errors, typographical errors, or defects, as defined in § 21.3. For the NRC to issue a rule granting the DC renewal under § 52.59(a), the design, either as originally certified or as modified during the rulemaking on renewal, must comply with (1) the Atomic Energy Act of 1954, as amended (AEA), (2) the NRC regulations applicable and in effect at the time the certification was issued, and (3) the applicable requirements of § 50.150, "Aircraft impact assessment."<sup>1</sup>

<sup>1</sup> The requirement for modifications in DC renewals to address § 50.150 was added to § 52.59(a) by a rule published June 12, 2009, requiring applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft (74 FR 28111). This requirement is applicable to the U.S. ABWR DC renewal because this is its first renewal and the U.S. ABWR DC was in effect on July 13, 2009.

A DC renewal applicant may propose to amend the design under § 52.59(c). An amendment is an applicant-proposed change that is not an update under § 52.57(a) or a change to meet the renewal standards in § 52.59(a). Amendments must comply with the AEA and the NRC's regulations applicable and in effect at the time of renewal rather than the § 52.29(a) standards. If the amendment request entails such an extensive change to the certified design that an essentially new standard design is being proposed, a new DC application must be submitted.

In addition, NRC regulations at § 52.59(b) state that the Commission may impose other requirements if it determines any of the following:

1. They are necessary for adequate protection to public health and safety or common defense and security;

2. They are necessary for compliance with the NRC's regulations and orders applicable and in effect at the time the certification was issued; or

3. There is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementing those requirements are justified in view of this increased protection.

The final U.S. ABWR DC rule for the original certification, **SUPPLEMENTARY INFORMATION**, Section II.A.1, "Finality," stated that the NRC "does not plan or expect to be able to conduct a de novo review of the entire design if a certification renewal application is filed under § 52.59[.]" "Criteria for renewal" (62 FR 25800, 25805). Instead, the NRC stated that it expects that the focus of the review would be on changes to the design that are proposed by the applicant and insights from relevant operating experience with the certified design or other designs, or other material new information arising after the NRC staff's review of the design certification. Furthermore, the standards in § 52.59(b) control the imposition of new requirements during the review of applications for renewal. When GEH applied to renew the U.S. ABWR DC, the NRC affirmed this position, reviewed only those aspects of the design that were amended or modified, and determined whether operating experience or other material new information indicated that additional changes to the design were necessary. The staff reviewed GEH's proposed amendments and modifications to the design; the staff did not impose changes under 10 CFR 52.59(b).

On June 12, 2009, the NRC published a rule requiring applicants for new

nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft (74 FR 28111). By letter dated December 7, 2010, GEH submitted its application to renew the U.S. ABWR DC to the NRC, which included Revision 5 to the design control document. This revision includes a containment re-analysis amendment and the necessary changes to meet the requirements of § 50.150, "Aircraft impact assessment." Revision 5 of the DCD also describes the aircraft impact assessment results and identifies and incorporates design features and functional capabilities to show, with reduced use of operator actions, that the reactor core remains cooled and spent fuel pool integrity is maintained.

In a letter dated July 20, 2012, the NRC identified proposed changes that were regulatory improvements or that could meet the criteria in § 52.59(b). The NRC suggested that GEH consider the recommendations contained in SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami," dated February 17, 2012, addressing Recommendations 4.2, 7.1, and 9.3 from SECY-11-0093, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," enclosure, "Recommendations for Enhancing Reactor Safety in the 21st Century; The Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident report," dated July 12, 2011. Subsequently, during the Mitigation of Beyond-Design-Basis Events rulemaking that resulted in § 50.155, "Mitigation of beyond-design-basis events," the Commission determined that it would be inappropriate to impose mitigation strategies requirements on DCs.<sup>2</sup>

After the NRC's July 20, 2012, letter to GEH, the NRC issued several requests for additional information to identify additional items or clarify the items

communicated in the 2012 letter. By letter dated February 19, 2016, GEH submitted DCD, Revision 6, to incorporate changes to the U.S. ABWR DCD made in response to NRC's 2012 letter and to the NRC's requests for additional information. In addition, this revision transmitted corrections of typographical errors that were identified during document development, and other required formatting changes. These corrections represent non-substantive changes that are editorial in nature. The NRC reviewed these typographical changes and determined that the changes do not affect the NRC's findings in the final safety evaluation report for original certification and are acceptable. On December 20, 2019, the applicant submitted DCD, Revision 7, that incorporated the remaining changes provided in earlier responses to requests for additional information. The NRC reviewed DCD, Revision 7, against the changes proposed in responses to requests for additional information and noted that two short paragraphs were missing from Chapter 5. On March 16, 2020, the applicant resubmitted DCD, Revision 7, Chapter 5, including the previously missing paragraphs. To ensure that the public can reference a single ADAMS package for this document, the NRC copied the original DCD, Revision 7, ADAMS package, and replaced Chapter 5 with the corrected file. This corrected ADAMS package is the collection of DCD, Revision 7, chapters that the NRC has reviewed (ADAMS Accession No. ML20093K254). The NRC's review is documented in Supplement 2 to NUREG-1503, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design" (ADAMS Accession No. ML20301A886). This proposed rule would certify Revision 7 of the U.S. ABWR DCD as provided in ADAMS Accession No. ML20093K254.

Separately, Toshiba Corporation Energy Systems and Solutions Company (Toshiba) sought renewal of the U.S. ABWR DC, incorporating the Toshiba-specific aircraft impact assessment amendment used in the STPNOC DCD. On June 9, 2016, Toshiba withdrew its renewal application for the U.S. ABWR DC. The Toshiba ABWR was to incorporate the Toshiba-specific aircraft impact assessment amendment of the U.S. ABWR design certification, identified in the current appendix A to 10 CFR part 52 as the South Texas Project Nuclear Operating Company (STPNOC) DCD. The original U.S. ABWR design certification has expired, along with its STPNOC DCD aircraft impact assessment amendment, and

Toshiba has withdrawn its renewal U.S. ABWR DC application; therefore, Toshiba's STPNOC DCD with its Toshiba-specific aircraft impact assessment amendment is not considered to be in timely renewal as described in § 52.57(b).

On June 22, 2018, the only U.S. ABWR combined license (COL) holder, Nuclear Innovation North America LLC, requested NRC approval to withdraw the COLs for South Texas Project, Units 3 and 4. The NRC approved the termination of these COLs on July 12, 2018. Since the only COLs that referenced the Toshiba STPNOC DCD has been terminated, and no other license or application referencing the U.S. ABWR DC exists, the Toshiba STPNOC DCD no longer meets the requirement for validity beyond the date of expiration under § 52.55(b). Finally, GEH has not requested to renew the STPNOC amendment. For all these reasons, the NRC is not retaining the original DCD or the STPNOC DCD option in Appendix A to 10 CFR part 52. Instead, the NRC is proposing to replace appendix A to 10 CFR part 52 with a rule certifying the renewed GEH U.S. ABWR design.

#### IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC intends to certify the renewal for the U.S. ABWR standard design for use in nuclear power plant licensing under 10 CFR part 50, "Domestic licensing of production and utilization facilities," or part 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner that also follows other best practices appropriate to the

<sup>2</sup> In the Mitigation of Beyond-Design-Basis Events proposed rule regulatory analysis, dated October 2015, the Commission explained that its proposal to make the Mitigation of Beyond-Design-Basis Events rule inapplicable to existing DCs, which included the U.S. ABWR, was based on concluding that "[t]he issues that may be resolved in a DC and accorded issue finality may not include operational matters, such as the elements of the [Mitigation of Beyond-Design-Basis Events] proposed rule." However, as discussed in SECY-19-0066, "Staff Review of NuScale Power's Mitigation Strategy for Beyond-Design-Basis External Events," the design certification can provide for finality under 10 CFR 52.63 and Section VI of appendix A to 10 CFR part 52 for the adequacy of the structures, systems, and components to perform their mitigation strategies functions, as analyzed in the final safety analysis report.

subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

**VI. Environmental Assessment and Final Finding of No Significant Impact**

The NRC has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC’s regulations in subpart A of 10 CFR part 51, that this proposed rule, if issued, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The Commission has determined in § 51.32

that there is no significant environmental impact associated with the issuance of the standard design certification or its amendment, as applicable. This reflects the fact that a DC rule does not authorize the siting, construction, or operation of a facility referencing any particular design, but only codifies a standard design certification in a rule (the U.S. ABWR DC renewal in this case). The NRC will evaluate the environmental impacts and issue an environmental impact statement as appropriate under NEPA as part of the application for the construction and operation of a facility referencing a DC rule. Comments on the environmental assessment will be limited to the consideration of severe accident mitigation design alternatives as required by § 51.30(d).

**VII. Paperwork Reduction Act Statement**

This proposed rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, control number 3150–0151.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

**VIII. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

**DOCUMENTS RELATED TO U.S. ABWR DESIGN CERTIFICATION RENEWAL RULE**

Document	ADAMS Accession No./ Federal Register Citation
SECY–20–0112, “Direct Final Rule–Advanced Boiling Water Reactor Design Certification Renewal (RIN 3150–AK04; NRC–2017–0090),” December 9, 2020.	ML20170A520
GE-Hitachi ABWR Design Control Document Tier 1 & 2, Revision 7, October 2019 (includes correction noted, as of March 2020).	ML20093K254
GE-Hitachi Nuclear Energy, Transmittal of ABWR Standard Plant Design Certification Renewal Application Design Control Document, Revision 5, Tier 1 and Tier 2, December 7, 2010.	ML110040176
GE-Hitachi ABWR Design Control Document Tier 1 & 2, Revision 5, December 7, 2010 .....	ML110040323
Technical Report NEDO–33875, ABWR U.S. Certified Design—Aircraft Impact Assessment, Licensing Basis Information and Design Details for Key Design Features, Rev. 3 (M170049), February 2017.	ML17059C523
Licensing Technical Report NEDO–33878, ABWR ECCS Suction Strainer Evaluation of Long-Term Recirculation Capability, Rev. 3 (M180068), March 2018.	ML18092A306
<b>Final Safety Evaluation Report and Supplements</b>	
NUREG–1503, Supplement 2, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,” October 2020.	ML20301A886
NUREG–1503, Supplement 1, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,” May 1997.	ML080710134
NUREG–1503, Vols. 1–2, “Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,” July 1994.	ML080670592
<b>Environmental Review</b>	
Environmental Assessment by the U.S. Nuclear Regulatory Commission Relating to Renewal of the Certification of the ABWR Standard Design, June 2021.	ML21147A381
Staff Technical Analysis in Support of the Advanced Boiling Water Reactor Design Certification Renewal Environmental Assessment.	ML20024D602
MFN 16–062, “Applicant’s Supplemental Environmental Report—Amendment to Standard Design Certification (ABWR Renewal Docket 52–045),” August 2016.	ML16235A415
25A5680AA, “Amendment to Technical Support Document for the ABWR,” Sheet 1, November 30, 2010 (Renewal Application).	ML110040178
SECY–97–077, “Certification of Two Evolutionary Designs,” April 15, 1996 (Original ABWR Environmental Assessment) ....	ML003708129
Letter from GE Nuclear Energy Submitting the Enclosed .....	ML100210563
“Technical Support Document for the ABWR,” December 21, 1994 (Original NEPA/SAMDA Submittal) .....	
<b>Commission Papers, Original Design Certification, Interim Rule Amendments, and Other Supporting Documents</b>	
SECY–19–0066, “Staff Review of NuScale Power’s Mitigation Strategy for Beyond-Design-Basis External Events,” June 26, 2019.	ML19148A443
SECY–12–0025, “Proposed Orders and Requests for Information in Response to Lessons Learned from Japan’s March 11, 2011, Great Tohoku Earthquake and Tsunami,” February 17, 2012.	ML12039A111

## DOCUMENTS RELATED TO U.S. ABWR DESIGN CERTIFICATION RENEWAL RULE—Continued

Document	ADAMS Accession No./ Federal Register Citation
SECY-11-0093, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," July 12, 2011.	ML11186A950
The Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident, July 12, 2011 .....	ML111861807
Staff Requirements Memorandum on SECY-90-377, "Requirements for Design Certification Under 10 CFR Part 52," February 15, 1991.	ML003707892
SECY-90-377, "Requirements for Design Certification under 10 CFR Part 52," November 8, 1990 .....	ML003707889
NUREG-1948, "Final Safety Evaluation Report Related to the Aircraft Impact Amendment to the U.S. Advanced Boiling Water Reactor (ABWR) Design Certification," June 2011.	ML11182A163
U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment, December 16, 2011 .....	76 FR 78096
LBP-11-07, Atomic Safety and Licensing Board Memorandum and Order in the South Texas Project Electric Generating Station Units 3 and 4 Combined License Proceeding, February 28, 2011.	ML110591049
GE Hitachi Nuclear Energy; Acceptance for Docketing of an Application for Renewal of the U.S. Advanced Boiling Water Reactor Design Certification, February 18, 2011 (Acceptance Application).	76 FR 9612
GE Hitachi Nuclear Energy; Notice of Receipt and Availability of an Application for Renewal of the U.S. Advanced Boiling Water Reactor Design Certification, January 27, 2011 (Notice of Receipt of the Application).	76 FR 4948
ABWR-LIC-09-621, Revision 0, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," November 2009.	ML093170455
Consideration of Aircraft Impacts for New Nuclear Power Reactors, June 12, 2009 .....	74 FR 28111
Licenses, Certifications, and Approvals for Nuclear Power Plants, August 28, 2007 (Revision of 10 CFR Parts 50 and 52) ..	72 FR 49351
Presidential Memorandum, "Plain Language in Government Writing," June 10, 1998 .....	63 FR 31883
Policy Statement on Adequacy and Compatibility of Agreement States Programs, September 3, 1997 .....	62 FR 46517
Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design, May 12, 1997 .....	62 FR 25800
(Original U.S. ABWR Design Certification) .....	
GE-Hitachi Nuclear Energy, Transmittal of ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 7, Chapter 5, March 16, 2020.	ML20076D961
GE-Hitachi Nuclear Energy—ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 7, Tier 1 and Tier 2, December 20, 2019.	ML20007E274
GE-Hitachi Nuclear Energy, Submittal of ABWR Standard Plant Design Certification Renewal Application Design Control Document, Revision 6, Tier 1 and Tier 2, February 19, 2016.	ML16081A268
GE-Hitachi Nuclear Energy—ABWR Standard Plant Design Certification Renewal Application Design Control Document Revision 6, Tier 1 and Tier 2, February 19, 2016.	ML16214A015
Mitigation of Beyond-Design-Basis Events (MBDBE)—Regulatory Analysis—Proposed Rule Post-SRM, October 2015 .....	ML15266A133
Letter from Nuclear Innovation North America LLC, South Texas Project Units 3 and 4 Termination of Combined Licenses NPF-97 and NPF-98, July 12, 2018.	ML18179A217
South Texas Project, Units 3 and 4, Request for Withdrawal of Combined Licenses, June 22, 2018 .....	ML18184A338
Withdrawal of Toshiba Advanced Boiling Water Reactor Design Certification Rule Renewal Application, June 9, 2016 .....	ML16173A310
GE-Hitachi Nuclear Energy—U.S. Advanced Boiling Water Design Certification Renewal Application, July 20, 2012 .....	ML12125A385
Reactor Regulatory History on Design Certification Rules, April 26, 2000 <sup>3</sup> .....	ML003761550
Notice of Issuance of Revised Final Design Approval for U.S. ABWR Standard Design, December 1, 1994 .....	59 FR 61647
Letter to GE Nuclear Energy Transmitting the Revised Final Design Approval for [the] U.S. ABWR Standard Design, November 23, 1994.	ML20077A747
Issuance of Final Design Approval Pursuant to 10 CFR Part 52, Appendix O; U.S. Advanced Boiling Water Reactor Design; GE Nuclear Energy, July 20, 1994.	59 FR 37058
Final Design Approval FDA-0 for GE Nuclear Energy U.S. ABWR Standard Design, July 13, 1994 (Docket No. 52-001) ....	ML20070L506
GE Nuclear Energy; Receipt of Application for Design Certification, March 20, 1992 (Initial Application) .....	57 FR 9749

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2017-0090.

Dated: June 23, 2021.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2021-13802 Filed 6-30-21; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0212; Project Identifier 2018-CE-032-AD]

RIN 2120-AA64

#### Airworthiness Directives; DG Flugzeugbau GmbH Gliders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all

<sup>3</sup> The regulatory history of the NRC's design certification reviews is a package of documents that is available in the NRC's PDR and NRC Library: Reactor Regulatory History on Design Certification Rules, April 26, 2000. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs. This document predates this rulemaking and therefore does not contain a regulatory history for this rulemaking.

DG Flugzeugbau GmbH Models DG-808C and DG-1000T gliders. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damaged fuel hoses due to environmental and fatigue deterioration. This proposed AD would require inspecting the polyurethane (PU) fuel hoses, replacing the PU fuel hoses if there is damage, and establishing a life limit for the PU fuel hoses. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 16, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact DG Flugzeugbau GmbH, Otto-Lilienthal Weg 2, D-76646 Bruchsal, Germany; phone: +49 (0)7251 3202-0; email: [info@dg-flugzeugbau.de](mailto:info@dg-flugzeugbau.de); website: <https://www.dg-flugzeugbau.de/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0212; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO

64106; phone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2021-0212; Project Identifier 2018-CE-032-AD” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

##### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

##### Background

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0127,

dated June 11, 2018 (referred to after this as “the MCAI”), to address an unsafe condition on DG Flugzeugbau GmbH Models DG-808C and DG-1000T gliders. The MCAI states:

An occurrence was reported where, during accomplishment of a 10 years inspection on a DG-808C powered sailplane, a damaged (broken) PU [polyurethane] fuel hose was found. The result of subsequent investigation indicated that the damage mode has features of environmental and fatigue deterioration. Additionally, it was determined that similar PU fuel hoses are also installed on other powered sailplane types of the same manufacturer.

This condition, if not detected and corrected, could lead to reduced or interrupted fuel supply to the engine, consequent loss of the available power or fire, possibly resulting in reduced control of the powered sailplane.

To address this potential unsafe condition, DG-Flugzeugbau GmbH issued the applicable TN [Technical Note], providing instructions to inspect the affected parts and replace these with serviceable parts. Additionally, service life limits were established for those serviceable parts.

For the reasons described above, this [EASA] AD requires repetitive inspections of the affected parts. This [EASA] AD also requires replacement of the affected parts with serviceable parts and introduces life limits for serviceable parts.

You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0212.

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed DG Flugzeugbau GmbH Technical Note No. 800/46, Issue 01.a, dated March 7, 2018, for Model DG-808C gliders; and Technical Note No. 1000/38, Issue 01.a, dated February 15, 2018, for Model DG-1000T gliders. The service information, as applicable to the appropriate model glider, specifies inspections of the PU fuel hoses, replacement of the PU fuel hoses if damage is found during an inspection, and actions to take when the hoses have reached their life limit. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

#### FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information

referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

#### Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under “Differences Between this Proposed AD and the MCAI.”

#### Differences Between This Proposed AD and the MCAI

The MCAI requires replacing any damaged fuel hoses before next engine operation, while this proposed AD would require replacing damaged fuel hoses before further flight. Even though use of the engine is optional and the glider can operate without the engine, the glider has other electronic equipment installed that could cause arcing and result in an in-flight fire if there is a fuel leak.

#### Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 gliders of U.S. registry. The FAA also estimates that it would take about 2 work-hours per glider to comply with each inspection required by this proposed AD. The average labor rate is \$85 per work-hour.

Based on these figures, the FAA estimates the inspection cost of this proposed AD on U.S. operators to be \$1,700, or \$170 per glider, each inspection cycle.

In addition, the FAA estimates that each replacement action required by this proposed AD would take about 8 work-hours and require parts costing \$500. Based on these figures, the FAA estimates the replacement cost of this proposed AD on U.S. operators to be \$1,180 per glider.

#### Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

#### List of Subjects in 14 CFR Part 39

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**DG Flugzeugbau GmbH:** Docket No. FAA–2021–0212; Project Identifier 2018–CE–032–AD.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 16, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to DG Flugzeugbau GmbH Models DG–808C and DG–1000T gliders, all serial numbers, certificated in any category.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 2800, Aircraft Fuel System.

#### (e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damaged polyurethane (PU) fuel hoses due to environmental and fatigue deterioration. The FAA is issuing this AD to prevent reduced or interrupted fuel supply to the engine or fuel leakage. The unsafe condition, if not addressed, could result in loss of engine power or in-flight fire.

#### (f) Definitions

(1) For purposes of this AD, an “affected part” is a PU fuel hose installed in an airframe fuel system or engine compartment that:

- (i) Does not meet industrial standard DIN 73379–2A, or
- (ii) Does not meet ISO 7840–A1 without metal shielding.

(2) For purposes of this AD, a “serviceable part” is a PU fuel hose installed in an airframe fuel system or engine compartment that:

- (i) Meets industrial standard DIN 73379–2A, or
- (ii) Meets industrial standard ISO 7840–A1 without metal shielding.

#### (g) Inspections for Gliders With An Affected Part Installed

Within the next 30 days after the effective date of this AD and thereafter at intervals not to exceed 12 months, visually inspect each affected part for fissures, kinks, and leaks. For this inspection, the ignition switch must be turned on to run the electric fuel pump to demonstrate an operating fuel pressure.

(1) If a fissure, kink, or leak is found on an affected part during any inspection required by the introductory language to paragraph (g) of this AD, before further flight: Replace all affected parts with unused (zero hours time-in-service (TIS)) serviceable parts by following paragraphs 3 and 4 of the Instructions in DG Flugzeugbau GmbH Technical Note No. 800/46, Issue 01.a, dated March 7, 2018 (TN No. 800/46), or paragraphs 3 through 5 of the Instructions in DG Technical Note No. 1000/38, Issue 01.a, dated February 15, 2018 (TN No. 1000/38), as applicable to your model glider.

(2) If no fissures, kinks, and leaks are found on all affected parts during any inspection required by the introductory language to paragraph (g) of this AD, before each affected part accumulates 6 years since first installation on a glider or within 6 months after the effective date of this AD, whichever occurs later: Replace all affected parts with unused (zero hours TIS) serviceable parts by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider. If the date of first installation on a glider is unknown for any affected hose, replace all affected hoses within 6 months after the effective date of this AD.



**(h) Inspections for Gliders With Only Serviceable Parts Installed**

(1) Before or upon accumulating 6 years since first installation on a glider and thereafter at intervals not to exceed 12 months, visually inspect each serviceable part for fissures, kinks, and leaks. For this inspection, the ignition switch must be turned on to run the electric fuel pump to demonstrate an operating fuel pressure.

(2) If a fissure, a kink, or a leak is found during any inspection required by paragraph (h)(1) of this AD, before further flight, replace the part with an unused (zero hours TIS) serviceable part by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider.

**(i) Life Limit**

Before accumulating 10 years since first installation on a glider and thereafter at intervals not to exceed 10 years, remove each serviceable part from service and replace with an unused (zero hours TIS) serviceable part by following paragraphs 3 and 4 of the Instructions in TN No. 800/46 or paragraphs 3 through 5 of the Instructions in TN No. 1000/38, as applicable to your model glider.

**(j) Parts Installation Prohibition**

As of the effective date of this AD, do not install an affected part on any glider.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information or email: [9-AVS-AIR-730-AMOC@faa.gov](mailto:9-AVS-AIR-730-AMOC@faa.gov).

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

**(l) Related Information**

(1) For more information about this AD contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov).

(2) Refer to European Aviation Safety Agency (EASA) AD 2018-0127, dated June 11, 2018, for more information. You may examine the EASA AD in the AD docket on the website at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0212.

(3) For service information identified in this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal Weg 2, D-76646 Bruchsal, Germany; phone: +49 (0)7251 3202-0; email: [info@dg-flugzeugbau.de](mailto:info@dg-flugzeugbau.de); website: <https://www.dg-flugzeugbau.de/>. You may review this referenced service information at the

FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued on June 25, 2021.

**Lance T. Gant,**

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-13988 Filed 6-30-21; 8:45 am]

**BILLING CODE 4910-13-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

**[EPA-R02-OAR-2021-0263; FRL 10025-39-Region 2]**

**Approval of Air Quality Implementation Plans; New York; 2011 Periodic Emission Inventory SIP for the Ozone Nonattainment Areas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the New York State Department of Environmental Conservation (NYSDEC). The SIP revision consists of the following: 2011 calendar year ozone precursor emission inventory for volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>), and carbon monoxide (CO) for the New York portion of the New York-Northern New Jersey-Long Island, Connecticut NY-NJ-CT area (New York Metropolitan Area, or NYMA) classified as serious ozone nonattainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard), and the Jamestown (Chautauqua County) ozone nonattainment area classified as marginal for the 2008 8-hour ozone standard. In addition, the SIP revision also consists of the 2011 calendar year statewide periodic emissions inventory for volatile organic compounds, oxides of nitrogen, and carbon monoxide. Emission inventories are needed to develop and assess new control strategies that the states may use in attainment demonstration SIPs for the new National Ambient Air Quality Standards for ozone and PM<sub>2.5</sub>. The inventories may also serve as part of statewide inventories for purposes of regional modeling in ozone and play an important role in modeling demonstrations for areas classified as nonattainment for ozone and carbon

monoxide. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2021-0263, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ysabel Banon, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3382, or by email at [banon.ysabel@epa.gov](mailto:banon.ysabel@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Supplementary Information section is arranged as follows:

**Table of Contents**

- I. Background
  - A. Statutory and Regulatory Requirements for a Periodic Emission Inventory
- II. Description of State's Submittals
- III. Evaluation of State's Submittals and Technical Information
  - A. Base Year Emissions Inventory
  - B. Evaluation of State's Submittals
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

**I. Background**

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. See 73 FR 16436 (March 27, 2008). The 2008

ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a more protective level. Under the EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. See 40 CFR 50.15.

Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the most recent three years (2008 through 2010) of air monitoring data. See 77 FR 30088 (May 21, 2012). The two 8-hour ozone marginal nonattainment areas located in New York State are the New York portion of the NYMA and the Jamestown nonattainment area. The remainder of New York State was designated as unclassifiable/attainment. The New York portion of the NYMA is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland, and the Shinnecock Indian Nation. See 40 CFR 81.333. The Jamestown nonattainment area is composed of Chautauqua County.

Because the NYMA and Jamestown areas were designated as ozone nonattainment areas, an ozone emissions inventory is needed for this area for air quality program planning purposes. Areas that were designated as marginal nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015 based on monitoring data from 2012 through 2014. On May 14, 2016, the EPA published its determination that the Jamestown area attained the 2008 ozone standard by the July 20, 2015 attainment date and that the NYMA area had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline. See 81 FR 26697. As a result, the NYMA area was reclassified to moderate nonattainment. See 40 CFR 81.306. Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than six years after the effective date of designations or July 20, 2018. See 40 CFR 51.903. On August 23, 2019, the EPA published its determination that the NYMA area had failed to attain the 2008 8-hour ozone NAAQS by the July 20, 2018 deadline, and so the EPA reclassified the NYMA area to serious nonattainment. 84 FR 44238.

#### *A. Statutory and Regulatory Requirements for a Periodic Emissions Inventory*

Section 182(a)(3) and 172(c)(3) of the Clean Air Act requires the periodic

submission of emissions inventories for the SIP planning process to address the pollutants for the ozone and carbon monoxide NAAQS. Identifying the calendar year gives certainty to states that require submission of the ozone and CO emission inventories periodically. These requirements allow the EPA to periodically reassess its policies and air quality standards and revise them as necessary based on the states' progress in reducing emissions. Most importantly, the ozone and CO inventories will be used to develop and assess new control strategies that the states may use in attainment demonstration SIPs for the ozone and CO NAAQS. The inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The inventory plays an important role in modeling demonstrations for areas classified as nonattainment and outside transport regions.

#### **II. Description of State's Submittals**

CAA Section 182, subpart 2 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. On November 13, 2017, NYSDEC submitted SIP revisions for the 2011 calendar year ozone precursor emission inventory for volatile organic compounds, oxides of nitrogen, and carbon monoxide for the NYMA classified as moderate ozone nonattainment for the 2008 8-hour ozone standard, and Jamestown (Chautauqua County) ozone nonattainment area classified as marginal for the 2008 8-hour ozone standard. In addition, the SIP revision consists of the 2011 calendar year statewide periodic emissions inventory for volatile organic compounds, oxides of nitrogen, and carbon monoxide.

#### **III. Evaluation of State's Submittals and Technical Information**

##### *A. 2011 Base Year Emission Inventory*

CAA section 172(c)(3) requires that each SIP include a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area. . . ." By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the "base year" inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. Additionally, for the 2008 ozone NAAQS, the EPA's March 6, 2015 ozone rule recommends 2011 as a baseline year from which emission reductions used to meet reasonable further progress

requirements are creditable. See 80 FR 12264.

On November 13, 2017, NYSDEC submitted to the EPA an emissions inventory of ozone precursors for 2011 as a SIP revision request. The inventory was submitted to meet the CAA section 182(a)(3)(A) obligation to develop a base year inventory. The State conducted a public comment process on the inventory which concluded on August 21, 2017 with a public hearing. The State did not receive public comments on the 2011 emissions inventories during the public comment period or during the hearing. The inventory includes emission estimates in tons per year and tons per ozone season day and represent emissions estimates from stationary and mobile source categories during a typical summer day when ozone formation is highest. The ozone emissions inventory catalogs NO<sub>x</sub> and VOC emissions because these pollutants are precursors to ozone formation. NYSDEC's 2011 emissions inventory contains emission estimates at the county level and also contains emission estimates summed to the geographic areas that correspond to the State's two nonattainment areas.

##### *B. Evaluation of State's Submittals*

Based on the EPA's review, the 2011 base year emissions inventory for the NYMA, the Jamestown area, and the entire State include essential data elements, source categories, sample calculations, or report documentation to allow the EPA to adequately determine if the inventory is accurate and complete. Consequently, New York's 2011 base year emissions inventory is consistent with the ozone base year emission inventory reporting requirements based on EPA guidance. New York's 2011 base year inventory is consistent with the ozone base year emission inventory reporting requirements for the following reasons:

1. Evidence that the inventory was quality assured by the State and its implementation documented;
2. The point source inventory must be complete;
3. Point source emissions must have been prepared or calculated according to current EPA guidance;
4. The area source inventory must be complete;
5. The area source emissions must have been prepared or calculated according to current EPA guidance;
6. Non-road mobile emissions must have been prepared according to current EPA guidance for all of the source categories;
7. The method (*e.g.*, Highway Performance Monitoring System or a

network transportation planning model) used to develop the vehicle miles travelled (VMT) estimates must follow EPA guidance. (The VMT development methods were described and documented in the inventory report.)

8. On-road mobile emissions were prepared according to the guidance.

Annual and ozone season day point, area, non-road, on-road, and biogenic emissions are identified in the inventory. Based on the EPA’s review, New York satisfies all of the EPA’s requirements for purposes of providing a comprehensive accurate, and current inventory of actual emissions for the ozone nonattainment. A summary of the EPA’s review is given below:

1. The Quality Assurance (QA) plan was implemented for all portions of the inventory. The QA plan included a QA/Quality control (QC) program for assessing data completeness and standard range checking. Critical data elements relative to the inventory sources were assessed for completeness. QA checks were performed relative to data collection and analysis, and double counting of emissions from point, area, and mobile sources. QA/QC checks

were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations. The inventory is well documented. New York provided documentation detailing the methods used to develop emissions estimates for each category. In addition, New York identified the sources of data it used to develop the inventory;

2. The point source emissions are complete in accordance with EPA guidance;

3. The point source emissions were prepared and calculated in accordance with EPA guidance;

4. The area source emissions are complete in accordance with EPA guidance;

5. Area source emissions were prepared and calculated in accordance with EPA guidance;

6. Emission estimates for the non-road mobile source categories are correctly based on the latest non-road mobile model or other appropriate guidance and prepared in accordance with EPA guidance;

7. The method used to develop VMT estimates is in accordance with EPA guidance and was adequately described

and documented in the inventory report; and,

8. The latest Motor Vehicle Emission Simulator (MOVES2014a) model was used in accordance with EPA guidance.

New York’s 2011 ozone emission inventory has been developed in accordance with EPA guidance. Therefore, the EPA is proposing to approve the emission inventory. Detailed emission inventory development procedures can be found in the following document: *Emission Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulation*, dated July 2017; *Using MOVES to Prepare Emission Inventories in State Implementation Plans and Transportation Conformity: Technical Guidance for MOVES2014, 2014a*, November April 2015.

Table 1—below shows the statewide summary of the 2011 Annual emissions. Tables 2–4 below show the 2011 CO, NO<sub>x</sub>, and VOC annual emission by category for the ozone nonattainment areas. Table 5-below shows the summary emission by category, in tons per ozone season day.

TABLE 1—STATEWIDE SUMMARY OF 2011 ANNUAL EMISSIONS [Tons]

2011 New York State Annual						
	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors
CO .....	52,277	217,200	765,931	890,013	73,592	1,999,013
NO <sub>x</sub> .....	51,048	65,602	104,725	173,269	8,516	403,160
VOC .....	8,638	221,174	105,266	86,980	391,579	813,637

TABLE 2—NYMA AND JAMESTOWN 2011 ANNUAL CO EMISSIONS

County name	CO tons per year					
	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors
Bronx .....	481.38	1,804.33	12,589.03	19,739.31	69.11	34,683.16
Kings .....	402.73	4,075.73	37,417.24	32,242.24	86.26	74,224.2
Nassau .....	1,355.92	3,773.09	56,538.97	72,093.37	455.06	134,216.4
New York .....	1,382.31	3,302.12	74,065.45	29,523.84	31.40	108,305.1
Queens .....	1,432.93	3,372.13	46,722.59	49,875.48	118.83	101,522.0
Richmond .....	771.13	2,260.14	11,978.46	14,483.11	98.51	29,591.35
Rockland .....	106.65	1,609.30	12,339.81	16,194.00	267.29	30,517.05
Suffolk .....	2,245.55	8,580.85	94,937.08	102,473.20	1,982.01	210,218.7
Westchester .....	472.12	4,888.18	42,788.68	48,675.43	631.37	97,455.78
Total .....	8,650.71	33,665.87	389,377.30	385,299.98	3,739.81	820,733.7
Chautauqua .....	662.590	3,961.99	8,460.39	11,905.87	1471.83	26,462.7

TABLE 3—NYMA AND JAMESTOWN 2011 ANNUAL NO<sub>x</sub> EMISSIONS

County name	NO <sub>x</sub> tons per year					
	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors
Bronx .....	563.91	2,571.79	2,387.14	4,822.04	7.68	10,352.56
Kings .....	1,063.94	5,484.64	5,348.52	7,563.46	10.54	19,471.10
Nassau .....	2,518.47	4,153.45	3,751.43	12,522.14	35.70	22,981.19
New York .....	3,147.56	10,786.66	13,137.78	7,066.32	5.03	34,143.35
Queens .....	2,370.14	4,734.23	10,425.27	10,801.61	15.53	28,346.78
Richmond .....	895.39	1,082.34	2,540.24	2,727.46	8.54	7,253.97
Rockland .....	360.39	903.75	1,207.22	2,642.45	19.22	5,133.03
Suffolk .....	3,298.58	4,309.39	14,171.66	16,959.84	150.76	38,890.23
Westchester .....	1,344.18	3,224.12	2,999.25	7,736.45	46.56	15,350.56
Total .....	15,562.58	37,250.25	55,968.49	72,841.76	299.56	181,922.77
Chautauqua .....	2141.81	815.65	2,289.15	2,776.52	245.69	8,268.82

TABLE 4—NYMA AND JAMESTOWN 2011 ANNUAL VOC EMISSIONS

County name	VOC tons per year					
	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors
Bronx .....	39.77	10,525.42	1,142.39	2,035.09	498.54	1,4241.2
Kings .....	303.59	19,127.05	2,957.06	3,382.77	389.63	26,160.1
Nassau .....	263.49	12,096.49	4,596.46	7,215.96	3,247.33	27,419.7
New York .....	189.45	13,274.27	4,754.84	2,894.63	170.79	21,284
Queens .....	239.63	18,293.89	3,841.17	5,260.83	682.95	28,318.5
Richmond .....	185.57	3,947.04	1,125.80	1,520.59	651.25	7,430.25
Rockland .....	74.03	2,834.50	1,341.89	1,450.91	2,767.01	8,468.34
Suffolk .....	457.17	15,980.50	10,969.88	9,750.32	13,821.42	50,979.3
Westchester .....	79.94	9,264.73	3,935.55	4,468.14	4,956.84	22,705.2
Total .....	1,832.65	105,343.90	34,665.05	37,979.23	2,7185.8	207,007
Chautauqua .....	167.75	6,726.66	1,515.54	1,152.29	245.69	9,807.93

TABLE 5—NYMA AND JAMESTOWN SUMMARY OF 2011 OSD EMISSIONS  
[Tons per day]

	2011 New York Metropolitan Area (NYMA) ozone season day						Jamestown Area ozone season day					
	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors *	Point	Nonpoint	Nonroad	On-road	Biogenic	Total for all sectors
CO .....	90.57	46.18	1,088.43	1,018.81	22.11	2,264.10	4.46	5.49	23.64	28.72	9.17	71.48
NO <sub>x</sub> .....	344.88	52.49	155.07	205.86	1.35	759.65	10.31	1.60	23.64	7.83	1.13	44.51
VOC .....	11.26	301.11	96.88	104.46	191.15	704.86	1.06	18.36	4.23	3.07	45.75	72.47

**IV. Proposed Action**

The New York emission inventory SIP revision will ensure that the requirements for emission inventory measures and reporting are adequately met. To comply with the emission inventory requirements, on November 13, 2017, NYSDEC submitted the complete inventory containing point, area, on-road, non-road mobile, and biogenic source data, and accompanying documentation. The EPA is proposing to approve New York’s 2011 emission inventory SIP revision submittal as meeting the essential reporting requirements for emission inventories. The EPA has also determined that the

SIP revision meets the requirements for emission inventories in accordance with EPA guidance. Therefore, the EPA is proposing to approve a revision to the New York SIP which pertains to the following: 2011 calendar year ozone season daily and annual ozone precursor emission inventories for CO, NO<sub>x</sub>, and VOC for the NYMA portion of New York-New Jersey-Long Island NY-NJ-CT serious nonattainment area and for the Jamestown marginal nonattainment area. In addition, the EPA is proposing to approve the 2011 calendar year ozone emissions inventory that was developed statewide for New York. The pollutants included

in the inventory are annual emissions for CO, NO<sub>x</sub>, and VOC. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region 2 Office by the method discussed in the ADDRESSES section of this action.

**V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to

approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen

dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, EPA Region 2.*

[FR Doc. 2021–14056 Filed 6–30–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R02–OAR–2020–0301; FRL 10025–51–Region 2]

#### Approval of Air Quality Implementation Plans; New York; Infrastructure Requirements for the 2015 Ozone, National Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of New York’s State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

**DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2020–0301 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. To reduce the risk of COVID–19 transmission, for this action we will not be accepting comments submitted by mail or hand delivery.

All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically at [www.regulations.gov](http://www.regulations.gov). To reduce the transmission of COVID–19, we do not plan to offer hard-copy review of the docket for this action. Please email the person listed in the **FOR FURTHER INFORMATION CONTACT** if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Linky, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3764, or by email at [Linky.Edward@epa.gov](mailto:Linky.Edward@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What action is the EPA proposing?

The EPA is proposing to approve elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a)(1) and (2) infrastructure requirements of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS or standard), except for the CAA section 110(2)(D)(i)(I) transport provisions which will be addressed in a separate action. As explained below, the EPA is proposing to find that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

## II. What is the background information?

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP, within 3 years after the promulgation of a new or revised NAAQS, a plan that meets the applicable requirements of section 110(a)(2). The EPA commonly refers to such state plans as “infrastructure SIPs.” The EPA promulgated a revised NAAQS for ozone in 2015 (“2015 Ozone”). 80 FR 65291 (October 26, 2015).

The New York State Department of Environmental Conservation (NYSDEC) submitted the following revisions to its Infrastructure State Implementation Plan (ISIP):

- 2015 Ozone ISIP submitted on September 25, 2018.
- The September 25, 2018 transmittal letter indicated that NYSDEC would be updating Element G, which includes updates to the Air Quality Index and Emergency Contract.
- The updated Element G was received, along with a letter to EPA Regional Administrator Peter D. Lopez on July 10, 2019, and is incorporated into this assessment by the EPA (which, together with the September 25, 2018 submittal, is referred to herein as the “submittal”).

## III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS.

Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to the EPA plans to implement, maintain, and enforce each of the NAAQS promulgated by the EPA. The EPA interprets this provision to require states to address basic SIP requirements, including emission inventories, monitoring, and modeling to ensure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard.

## IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements of CAA sections 110(a)(1) and (2), relevant to this action, are discussed in the following EPA guidance documents: (1) The EPA’s October 2, 2007 memorandum entitled, “Guidance on

SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards;” (2) the EPA’s September 13, 2013 memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 Guidance), which addresses the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 particulate matter (PM<sub>2.5</sub>) NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.<sup>1</sup>

The EPA reviews each infrastructure SIP submission with the applicable statutory provisions of CAA section 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): Emission limits and other control measures;
- 110(a)(2)(B): Ambient air quality monitoring/data system;
- 110(a)(2)(C): Program for enforcement of control measures and for construction or modification of stationary sources;
- 110(a)(2)(D)(i)(I) and (II): Interstate pollution transport;
- 110(a)(2)(D)(ii): Interstate and international pollution abatement;
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, oversight of local governments and local authorities;
- 110(a)(2)(F): Stationary source monitoring and reporting;
- 110(a)(2)(G): Emergency powers;
- 110(a)(2)(H): Future SIP revisions;
- 110(a)(2)(I): Plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): Air quality modeling and data;
- 110(a)(2)(L): Permitting fees;
- 110(a)(2)(M): Consultation/participation by affected local entities.

This proposed action will not address the section 110(a)(2)(D)(i)(I) (prongs 1 and 2) portions of the New York 2015 Ozone infrastructure SIP. The EPA will act on those portions of New York’s infrastructure SIP in a separate rulemaking action.

## V. What is the EPA’s approach to the review of infrastructure SIP submissions?

Whenever the EPA promulgates a new or revised NAAQS, CAA section

110(a)(1) requires states to make Infrastructure SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions.

The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>2</sup> Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>3</sup> The EPA has other authority to address issues concerning a state’s implementation of its SIP.

## VI. What did New York submit?

NYSDEC submitted the following SIP submittals, which address the infrastructure requirements for the identified NAAQS:

- 2015 Ozone ISIP Revisions, submitted on September 25, 2018.
- 2015 Ozone ISIP Element G, submitted in a July 10, 2019 letter to Region 2 EPA Regional Administrator, Peter D. Lopez, entitled, “Revisions to Air Quality Index and Contacts” (which, together with the September 25, 2018 submittal, is referred to herein as the “submittal”).

New York’s Infrastructure SIP submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2015 Ozone NAAQS. The plan references the current New York Air Quality SIP, the New York Codes, Rules and Regulations (NYCRR), the New York Environmental Conservation

<sup>2</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including the EPA’s prior action on New York’s infrastructure SIP to address the Nitrogen Dioxide NAAQS, 79 FR 25066, 25067 (May 2, 2014).

<sup>3</sup> See the United States Court of Appeals for the Ninth Circuit’s decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018).

<sup>1</sup> All referenced memoranda are included in the docket for today’s action.

Law (ECL), and the New York Public Officer's Law (POL). The NYCRR, ECL, and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by the EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the internet at <https://www.epa.gov/sips-ny>.

## VII. How has the State addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions?

EPA addresses the infrastructure elements as follows:

*Element A: Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, and schedules for compliance. In its submittal, the NYSDEC stated that regulations have been adopted under 6 NYCRR to limit emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) for purposes of attaining several ozone NAAQS. Regulations approved by EPA into the SIP are listed in a table under 40 CFR 52.1670(c), titled "EPA-Approved New York State Regulations and Laws." The NYSDEC submittal indicates that DEC's November 10, 2017 SIP submission for the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (New York metropolitan area, or NYMA) for the 2008 ozone NAAQS identified the permanent and enforceable regulations that primarily yielded reductions of NO<sub>x</sub> and VOC emissions.<sup>4</sup> In its submittal, New York identifies provisions of its federally enforceable SIP that contain enforceable emission limits and other control measures, such as 6 NYCRR subpart 201-1.4(a), which states that each permitted facility shall take all necessary and appropriate actions to prevent exceedance of applicable emissions limits during periods of start-up, shutdown, or malfunction. Moreover, the NYSDEC's submittal states that it does not authorize any "director's variance" or "director's discretion" to allow revisions to or exemptions from SIP submission limitations without further public participation and approval from the EPA.

The SIP submittal does not account for additional NO<sub>x</sub> and VOC control measures needed to attain the 2015 Ozone NAAQS. NYSDEC stated in its submission that these control measures will be addressed in the New York

metropolitan area's ("NYMA") attainment SIP that is due by August 3, 2021.

The EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 Ozone NAAQS based on the enforceable emission limits and other control measures in Title 6 of the NYCRR.

*Element B: Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, to monitor, compile, and analyze ambient air quality data, and to make these data available to the EPA upon request. The NYSDEC submittal for the 2015 Ozone ISIP details the State's authority to adopt and enforce provisions of the SIP and to operate an ambient air quality monitoring network. The EPA proposes to find that these provisions demonstrate that NYSDEC has the requisite authority to support Element B. NYSDEC states that it will continue to operate an air quality monitoring network that complies with the EPA requirements and will submit this data to the EPA's Air Quality System (AQS). NYSDEC's submittal states that it monitors ozone at 28 sites across the State using continuous and/or manual instrumentation, in accordance with 40 CFR part 53 and 40 CFR part 58. These sites are part of the federally mandated network of NCore multipollutant sites (NCore), the State and Local Air Monitoring Stations (SLAMS) network, and Photochemical Assessment Monitoring Stations (PAMS), with additional VOC monitoring conducted through the EPA's National Ambient Air Toxics (NATTS) network.

*Authority:* New York's 2015 Ozone ISIP submittal states that while the NYSDEC does not have specific regulations authorizing monitoring activities, the operation of monitoring networks falls under the broad statutory authority granted to the agency and the Commissioner of the NYSDEC through New York's Environmental Conservation Law (ECL) section 1-0101 (declaring New York's policy to prevent air, water and land pollution), section 3-0301 (granting the NYSDEC Commissioner the power to monitor the environment and identify changes and conditions in ecological systems and to warn of emergency conditions), and section 19-0103 (declaring New York's policy to maintain a reasonable degree of purity of the air resources of the state and require the use of all available practical and reasonable methods to

prevent and control air pollution in New York).

### *Monitoring network:*

The NYSDEC operates API-T400 ozone monitors at 28 sites across the State. In addition to monitoring for ozone, the monitoring sites also monitor for ozone precursors (NO<sub>x</sub> and VOCs). The EPA's promulgation of the 2015 Ozone NAAQS altered PAMS requirements. The new rule requires that PAMS stations be located at urban sites with populations of greater than one million people regardless of attainment status. To comply with PAMS requirements, sites were originally established in Queens County (NYC) and Monroe County (Rochester). These two PAMS sites have been relocated with the EPA's approval. The Queens site was relocated to an existing PAMS site in the Bronx (NYC), and the Rochester site was relocated to a new site at the Flax Pond Marine Laboratory in Suffolk County on the Long Island Sound. The Flax Pond Marine Laboratory site will assist in monitoring the high ozone gradient across Long Island Sound.

### *Annual Monitoring Network Plan:*

The NYSDEC prepares an Annual Monitoring Network Plan (Plan) that describes in detail the specifics of the monitoring network as required by 40 CFR Section 58.10. The Plan is made available for public inspection and comment for at least 30 days and then submitted to the EPA Region 2 Regional Administrator for approval or disapproval. The 2020 Plan was submitted to the EPA on September 23, 2020, following public review, and the EPA approved all Ozone related monitoring activities on January 11, 2021. The NYSDEC ensures that New York will meet the monitoring requirements promulgated under the 2015 Ozone NAAQS.

The EPA is therefore proposing that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2015 Ozone NAAQS based on the authority provided by the ECL and the operation of an EPA-approved ambient air monitoring network.

*Element C: Program for enforcement of control measures and for construction or modification of stationary sources:* Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) of Air Quality and minor source new source review. The

<sup>4</sup> [https://www.dec.ny.gov/docs/air\\_pdf/sip2008o3nymafinal.pdf](https://www.dec.ny.gov/docs/air_pdf/sip2008o3nymafinal.pdf).



three sub-elements of Element C are addressed below.

*Enforcement of SIP Measures:*

Statewide enforcement of new and modified sources, minor modifications of minor sources, and major modifications in areas designated as an attainment area or as an unclassifiable area for the 2015 Ozone NAAQS, is required by Title I of the Clean Air Act Part C (Major Sources of Prevention of Significant Deterioration). ECL section 19-0305 authorizes the NYSDEC Commissioner to enforce the codes, regulations, and rules duly promulgated or revised by the NYSDEC in accordance with Article 19 of the ECL. The New York federally approved SIP is a compilation of rules and procedures that have been duly promulgated by the NYSDEC in accordance with its statutory authority and consistent with the State APA. The NYSDEC has the authority to adopt all SIP measures. New York enforces emission limits and control measures through Title 21 of ECL article 71, "Enforcement of Article 19 and Air Pollution Emergency Rules and Regulations." 6 NYCRR part 201, entitled, "Permits and Regulations" also includes enforcement provisions. Specifically, subpart 201-1.13, entitled, "access to regulated facilities," grants representatives of the NYSDEC access in order to determine compliance with federal and state air pollution requirements, regulations or laws.

*Regulation of minor sources and minor modifications:*

The NYSDEC issues permits for minor sources of air pollution through 6 NYCRR Subpart 201-4 ("Minor Facility Registration") and Subpart 201-5 ("State Facility Permits"), and further regulates these sources through applicable state and federal regulations, including the SIP-approved 6 NYCRR Part 201, in order to control emissions of NO<sub>x</sub> and VOCs.

*Preconstruction PSD Permitting of Major Sources and Major Modifications:*

The NYSDEC has permitting authority under 6 NYCRR Part 231, "New Source Review for New and Modified Facilities" to implement the PSD program as required by the CAA Title 1 Part C for all sources subject to PSD in areas designated as in attainment or unclassifiable for the 2015 Ozone NAAQS. Part 231 of 6 NYCRR was revised in 2009 to comply with federal guidelines. This revision allowed the NYSDEC to resume administering the PSD program, which includes criteria pollutants (*i.e.*, all pollutants subject to a NAAQS, regulated under a New Source Performance Standard, or regulated under the CAA, with the exception of Section 112 Hazardous Air

Pollutants), which had been administered by the EPA since 2004. See 75 FR 70140 (Nov. 17, 2010).

6 NYCRR Part 231 also encompasses the regulation of greenhouse gases. The EPA approved the majority of this revised regulation into the New York SIP. (*see* 81 FR 95047 (Dec. 27, 2016)).

New York's 2015 Ozone ISIP submittal states that all applicable federal PSD requirements that are included in PSD permits are incorporated into Title V operating permits, and that all federally enforceable requirements are applied and enforced. In its submittal, New York affirms that the current NSR and PSD programs remain in effect and apply to the State's major stationary sources, and that the requirements of these programs are federally enforceable.

The EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(C) of the CAA with respect to the 2015 Ozone NAAQS. The EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. The EPA is proposing to find that New York has a SIP-approved minor new source review program. The EPA also proposes to find, based on the approval of New York's PSD program, that New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements.

*Element D: Interstate transport:* CAA section 110(a)(2)(D)(i) consists of four separate elements, or "prongs." CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions in amounts that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions that will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions in amounts that will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions in amounts that will interfere with any other state's required measures to protect visibility (prong 4).

*Prongs 1 and 2: Significant Contribution To Attainment and Interference With Maintenance*

This proposed action will not address the portions of the New York 2015 Ozone infrastructure SIP concerning prongs 1 and 2. The EPA will act on these portions of New York's

infrastructure SIP in a separate rulemaking action.

*Prong 3: Interference With PSD*

Under section 110(a)(2)(D)(i)(II) (prong 3), SIPs must contain provisions prohibiting emissions in amounts that would interfere with measures required to be in any other State's SIP under CAA Part C to prevent the significant deterioration of air quality. To satisfy section 110(a)(2)(D)(i)(II), New York relies on its SIP-approved nonattainment NSR and PSD permitting programs, which are implemented through 6 NYCRR Part 231 to prevent significant deterioration of air quality within the state and other nearby states. New York has affirmed that new major sources and major modifications in New York are subject to the State's federally approved PSD program, which applies to all NSR-regulated pollutants, and satisfies the EPA's PSD requirements.

The EPA recognizes that sources in New York not subject to PSD because they are in a nonattainment area may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. The EPA will consider and may approve nonattainment NSR provisions in determining whether a SIP satisfies prong 3 with respect to sources located in areas subject to nonattainment NSR, and thus not subject to PSD permitting. However, SIP revisions to address nonattainment NSR requirements for any new or revised NAAQS are due on a separate timeframe under section 172(b) of the CAA and are not subject to the timeframe for submission of infrastructure SIPs under section 110(a)(1). Therefore, a fully approved nonattainment NSR program for any previous NAAQS may be considered by the EPA as adequate for purposes of meeting the requirement of prong 3. New York has a SIP-approved nonattainment NSR program that applies to all NSR-regulated pollutants, ensuring regulation of major sources and major modifications in nonattainment areas.

Accordingly, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable prong 3 requirements of section 110(a)(2)(D)(i)(II) for the 2015 Ozone NAAQS.

*Prong 4: Visibility*

In its 2015 Ozone ISIP submittal, New York has affirmed that the State has met its visibility obligations through its coordination with regional Class I area states within the framework of the Mid-Atlantic/Northeast Visibility Union (MANE-VU), and its applicable SIP

submissions, including its EPA-approved Regional Haze SIP, as well as SIP provisions that replaced a Federal Implementation Plan (FIP) for the Danskammer and Roseton Generating Stations. On August 28, 2012, the EPA approved New York's Regional Haze SIP submittal as part of New York's SIP (*see* 77 FR 51915).<sup>5</sup>

In New York's 2015 Ozone ISIP submittal, it noted that the five-year progress report SIP that it submitted on June 16, 2015 (and subsequently approved by EPA on September 29, 2017 (*see* 82 FR 45499)) demonstrates that New York continues to meet its obligations to reduce visibility-impairing pollutants.

The EPA is proposing that New York satisfies the section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4). New York addresses the visibility protection requirements for the 2015 Ozone NAAQS through its Regional Haze SIP, which ensures that emissions from sources within the State are not interfering with measures to protect visibility in other states.

*110(a)(2)(D)(ii): Interstate Pollution Abatement and International Transport Provisions*

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). In assessing CAA section 110(a)(2)(D)(ii), we reviewed the information presented by New York in its 2015 Ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved New York SIP.

Section 126(a) requires that SIPs mandate that new (or modified) major sources subject to PSD notify neighboring States of potential air pollution impacts. New York indicates that it has addressed this requirement through 6 NYCRR Paragraph 201–6.3(b)(1), which states: “The department

shall give notice of each draft permit to any affected state on or before the time that the department provides this notice to the public under the requirements of this Part or Part 621 of this Title.”

Section 126(b) allows states to petition the EPA Administrator for a finding that a source or group of sources interferes with its ability to attain or maintain the NAAQS in violation of section 110(a)(2)(D)(i), and section 126(c) discusses violations as a result of such a finding. The NYSDEC affirms that no source within New York State is the subject of an active finding under CAA section 126 with respect to the 2015 Ozone NAAQS.

Section 115, entitled, “International Air Pollution,” requires states to revise SIPs under certain conditions to alleviate international transport into another country. The NYSDEC has affirmed that there are no final findings under CAA section 115 against New York State with respect to the 2015 Ozone NAAQS.

New York's SIP currently meets the requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Therefore, the EPA is proposing to approve the New York SIP as fully meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 Ozone NAAQS.

*Element E: Adequate Resources:* Section 110(a)(2)(E) requires each state to provide necessary assurances that the state will: (i) Have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) will comply with the requirements respecting state boards under CAA section 128, and (iii) where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision. This element of the submittal is consistent with New York infrastructure submittals that the EPA has previously approved. *See, e.g.,* 78 FR 25236 (April 30, 2013) (proposal) and 78 FR 37122 (June 20, 2013) (final approval). The EPA proposes to approve the New York submittal for meeting the requirements of Section 110(a)(2)(E) for the 2015 Ozone NAAQS.

In the 2015 Ozone ISIP submittal, NYSDEC indicates that it receives both operating and capital funding through the federal and state government budget processes. Operating funds are allocated to DAR annually and are used for daily administrative expenses, including salaries, fringe benefits, and indirect as

well as non-personnel services such as travel, supplies, contracts, and equipment costs. DAR is allocated operating funds from the following funding sources: General Fund, Cooperative Agreements (*i.e.*, EPA sections 103 and 105 federal air pollution control grants), and the Clean Air Fund, which is comprised of the Title V and Mobile Source accounts.

Capital funds may also be allocated to DAR through the state government budget process. They may be used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR may be allocated capital funds from three sources: General Fund, Mobile Source Account, and Rehabilitation and Improvement.

In accordance with 40 CFR part 51 subpart O, “Miscellaneous Plan Content Requirements,” NYSDEC receives state and federal funding on a yearly basis. State funding is part of the state government budget process. Federal funding comes in the form of grants from EPA. Resources will be acquired at the one-, three- and five-year intervals from the same operating and capital funding sources detailed above.

NYSDEC stated that, at the time of proposal of this infrastructure SIP, DAR's operating budget is \$33.3 million dollars annually. The resources considered necessary for the next five years depend on negotiated labor union contracts, inflation, indirect costs, and fringe benefit rates determined by the New York State Office of the State Comptroller but will be no less than 33.4 million dollars annually. The projections regarding acquiring necessary resources depend on New York State and federal budget processes, especially for allocation of available grant funds.

The NYSDEC addressed sub-element (ii), concerning conflict of interest, specifically the requirement to comply with the requirements of CAA Section 128(a), in its 2015 Ozone ISIP submission. With respect to the requirement of CAA Section 128(a)(1), the NYSDEC explains that New York State has no board or body authorized to approve permits or enforcement orders under the CAA. With respect to the requirements of CAA Section 128(a)(2), the NYSDEC explains that on May 23, 2013 it submitted a copy of Public Officers Law (POL) Section 73–a, “Financial disclosure,” and 19 NYCRR Subpart 937.1(a), “Access to Publicly Available Records,” and that these provisions were incorporated into the New York SIP for the limited purpose of satisfying CAA section 128(a)(2). *See*, 78 FR 37122, 37122–

<sup>5</sup> In the August 28, 2012 rulemaking approving New York's Regional Haze SIP submittal, the EPA promulgated a partial FIP to address our disapproval of New York's Best Available Retrofit (BART) determinations for the Roseton Generating Station's Unit's 1 and 2 and Danskammer Generating Station's Unit 4. *See* 77 FR 51915 (August 28, 2012). The emission reductions under the FIP were not necessary to demonstrate that New York met its share of the emissions reductions needed to meet reasonable progress goals (found at 40 CFR 51.308(d)(1)) at Class I areas affected by New York's emissions. The EPA fully approved that aspect of New York's Regional Haze SIP in the August 2012 rulemaking. *See* 77 FR 51915. The FIPs for Danskammer and Roseton have subsequently been replaced by SIP provisions approved by the EPA for Danskammer (82 FR 57126 (December 14, 2017)) and Roseton (83 FR 6970 (February 16, 2018)).

37124 (June 20, 2013). EPA proposes to find that the requirements of section 110(a)(2)(E)(ii) are therefore satisfied.

The NYSDEC has addressed CAA section 110(a)(2)(E) sub-element (iii) by referencing its ECL sections 19–0305, 71–2103, and 71–2105 and explaining that these provisions authorize the NYSDEC Commissioner to enforce the codes, rules and regulations established in accordance with Article 19 (Air Pollution Control) and Article 71 (Enforcement). NYSDEC states that it therefore has the authority to enforce all approved SIP measures. NYSDEC clarifies that it has the sole responsibility for implementing the SIP, and that even if it were to rely on a local or regional government(s), it would retain responsibility for ensuring adequate implementation of the plan. Finally, NYSDEC cites POL section 73–a, “Financial disclosure,” and 19 NYCRR Part 937, “Access to Publicly Available Records.” NYSDEC states that EPA approved New York’s submissions for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS for sub-elements 110(a)(2)(E)(ii) and (iii) and that EPA approved POL sections 73–a(2)(a)(i) and (ii) and 19 NYCRR Subpart 937.1(a) into the New York SIP for the limited purpose of satisfying CAA section 128(a)(2). See 78 FR 37122–37124. EPA proposes to find that the requirements of 110(a)(2)(E)(iii) are satisfied.

The EPA proposes to approve the New York submittal pursuant to section 110(a)(2)(E) with respect to the 2015 Ozone NAAQS based on the demonstration of adequate resources and authority.

*Element F: Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. This element of the submittal for the 2015 Ozone NAAQS is similar to New York infrastructure submittals that the EPA has previously approved. To emphasize the comprehensiveness of New York’s reporting system, the three sub-elements are described below.

*Sub-Element (i)—Testing, Inspection, Enforcement, and Compliance*

Pursuant to ECL section 19–0305(2), New York meets the requirement that each SIP provide a program for periodic testing and inspection of stationary sources, to identify allowable test methods, and to exclude any provision that would prevent the use of credible evidence of non-compliance. See 40 CFR 51.212. Moreover, 6 NYCRR Subpart 201–1.13 gives the NYSDEC access to regulated facilities, and 6

NYCRR Subpart 202–1 requires facility owners to conduct emissions tests according to specific procedures, provide notice to the NYSDEC in advance of the testing, and allows the NYSDEC to conduct separate emissions tests. The NYSDEC uses the enforceable test methods that are contained in 40 CFR part 51 Appendix M, “Recommended Test Methods for State Implementation Plans.” Pursuant to 40 CFR 51.212(c), the NYSDEC has certified that it does not preclude the use, including the exclusive use, of credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

*Sub-Element (ii)—Requirements for Periodic Reporting*

The NYSDEC has authority to enforce federal emissions reporting and record-keeping regulations through ECL Section 19–0311, “Operating permit program for sources subject to the federal Clean Air Act.” In particular, ECL Section 19–0311 Subsection 3 provides requirements for detailed monitoring, record-keeping, and reporting, including that records be kept for five years, and that monitoring records be submitted to the NYSDEC at least every six months. These requirements are also contained in 6 NYCRR Subpart 201–6.2(d), which requires that all Title V facility permit applications provide for emissions monitoring, record-keeping, and reporting. In addition, major facility owners must report annual emissions to the NYSDEC pursuant to 6 NYCRR Subpart 202–2, “Emission Statements.”

*Sub-Element (iii)—Stationary Source Emission Inventories*

This sub-element requires the correlation of all state reports on emissions from stationary sources. This includes emission inventories based on actual emissions submitted and calculated through annual emission statements from minor stationary sources based on area sources.

*Procedures Established by the EPA*

The EPA’s Air Emissions Reporting Requirements (AERR) were promulgated in 2008, consolidating and streamlining the requirements of several older rules for states and local air pollution control agencies to submit emissions inventories for criteria pollutants to the EPA’s Emissions Inventory System (EIS). See 73 FR 76539 (December 17, 2008). The EPA uses these submissions, along with other data sources (primarily

for air toxics), to build the National Emissions Inventory (NEI).

The NYSDEC ensures compliance with the AERR through several regulations, including 6 NYCRR Section 201–5.3 (concerning facility permit conditions, including record-keeping and recording requirements), 6 NYCRR Section 201–6.4 (requiring Title V permits to incorporate all federal reporting requirements), and 6 NYCRR Subpart 202–2, “Emission Statements” (outlining emission reporting requirements for major sources and sources in ozone nonattainment areas emitting at least 25 tons-per-year of NO<sub>x</sub> or VOCs). The NYSDEC ensures that records are available for public review pursuant to 6 NYCRR Part 616, “Access to Records.”

The EPA proposes to approve the New York submittal pursuant to Section 110(a)(2)(F) with respect to the 2015 Ozone NAAQS based on the demonstration of adequate stationary source monitoring and reporting.

*Element G: Emergency power:* Section 110(a)(2)(G) (Element G) requires states to provide for emergency authority to address activities causing imminent and substantial endangerment to public health and requires states to submit adequate contingency plans to implement the emergency episode provisions in their SIPs.

The EPA requires that Infrastructure SIP submittals meet the applicable contingency plan requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (“Prevention of Air Pollution Emergency Episodes”). Subpart H requires states that have air quality control regions identified as either Priority I, Priority IA, or Priority II to develop emergency episode contingency plans.

Articles 3 and 19 of the ECL provide New York State with the authority to address air pollution emergencies. ECL section 3–0301, entitled, “General functions power and duties of the DEC and the commissioner,” authorizes the NYSDEC to prevent and control air pollution emergencies as defined in ECL section 1–0303. ECL articles 3 and 19 are implemented through 6 NYCRR part 207, “Control Measures for Air Pollution Episodes,” which the EPA approved as part of the New York SIP. See 46 FR 55690 (November 12, 1981).

The EPA also notes that the NYSDEC has implemented 6 NYCRR Part 207 through Air Pollution Episode Procedures (APEPs), also called Alert Criteria (updated December 2018 and May 2019 at <http://www.dec.ny.gov/chemical/60440.html>).

As stated in its supplemental submittal dated July 10, 2019, the

NYSDEC has revised the Air Quality Index (AQI) reporting thresholds and related priority levels pursuant to the 2015 Ozone NAAQS and other NAAQS revisions to reflect 40 CFR part 58, Appendix G, Table 2, "Breakpoints for the AQI." The NYSDEC also updated its list of contacts and other relevant information. The July 2019 supplemental submittal indicates that the public was notified of the revisions through publication in the *Environmental Notice Bulletin* on May 22, 2019, and that no comments were received on the proposed submittal.

The EPA proposes that New York has met the requirements of section 110(a)(2)(G) for the 2015 Ozone NAAQS.

*Element H: Future SIP Revisions:* Section 110(a)(2)(H) requires states to have authority to revise their SIPs in response to changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. The EPA recognizes that the following provisions of the ECL provide the necessary authority for the NYSDEC to revise a SIP and provide for enforcement in response to revisions of the NAAQS, the availability of improved methods of attaining the NAAQS, or in response to a finding by the EPA that the SIP is substantially inadequate:

- 3-0301, "General functions, powers and duties of the department and the commissioner;"
- 19-0103, "Declaration of policy;"
- 19-0301, "Powers and duties;"
- 19-0303, "Codes, rules and regulations;"
- 19-0305, "Commissioner; enforcement power;"
- 71-2103, "Violations; civil liability;" and
- 71-2105, "Criminal liability for violations."

As the NYSDEC submittal explains, Article 19 of the ECL was adopted to protect New York's air resources from pollution and to effectuate the policy of the state to maintain a reasonable degree of purity of the air resources, consistent with public health and welfare and the industrial development of the state. To this end, the state legislature gave NYSDEC specific powers and duties, including the power to promulgate and revise regulations for preventing, controlling, or prohibiting air pollution. NYSDEC also has the specific authority to regulate motor vehicle exhaust, approve air contaminant control systems, and regulate fuels.

The EPA proposes to find that the SIP complies with the requirements of

section 110(a)(2)(H) for the 2015 Ozone NAAQS.

*Element I: Plan Revisions for Nonattainment Areas (under part D):* Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

*Element J: Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* Section 110(a)(2)(J) mandates that plans meet the requirements in CAA sections 121 (concerning consultation with government officials), 127 (concerning public notification), and Part C (relating to PSD and visibility protection).

#### *Consultation With Government Officials*

CAA Section 110(a)(2)(J) requires states to meet the applicable requirements of CAA section 121 relating to consultation. CAA section 121 requires states to provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, Tribal Nations, Federal Land Managers (FLMs), and Regional Organizations.

Although there are no federal lands within New York State to which the state plan applies, the NYSDEC participates in the consultation process of the Regional Haze SIP with the FLMs, states, and Tribes within the Mid-Atlantic/Northeast Visibility Union (MANE/VU) and other regional planning organizations, and has committed to comply with 40 CFR 51.308 to provide FLMs an opportunity to meaningfully inform the long-term strategy.

On December 22, 2005, the NYSDEC established a SIP Coordinating Council, consisting of senior policy representatives from 19 state agencies and authorities, and a SIP Task Force, consisting of officials from 37 local governments and designated organizations of elected officials. The SIP Coordinating Council provides a means to keep state agencies and local

governments informed of planned SIP activities and deadlines, and also provides a forum for discussion of SIP requirements and implications, such as effects on transportation planning. The SIP Task Force provides a means of facilitating local involvement at the Metropolitan Planning Organization (MPO) and county levels. Periodic meetings of both groups are convened as necessary to address ozone SIP development and nonattainment of the ozone NAAQS and other revised standards.

The EPA proposes to find that New York has met the requirements of CAA section 110(a)(2)(J) for consultation with government officials.

#### *Public Notification*

CAA section 110(a)(2)(J) also requires state plans to meet the public notification requirements of CAA section 127: to notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Ozone concentrations that have exceeded the 2015 Ozone NAAQS at any monitor state-wide are reported on the NYSDEC website, at <https://www.dec.ny.gov/chemical/38377.html>. Municipalities have emergency-response plans recommended by the New York State Office of Emergency Management and the Federal Emergency Management Agency that provide for public information and notification in the case of large-scale emergencies.

The NYSDEC's website at <https://www.dec.ny.gov/chemical/34985.html> contains an Air Quality Index (AQI) for reporting daily air quality to the public. It describes how clean or polluted the air is and what associated health effects might be a concern. The NYSDEC, in cooperation with the New York State Department of Health, posts warnings on the above-referenced website and issues press releases to local media outlets if dangerous conditions are expected to occur. These warnings are also available on the NYSDEC's toll-free Air Quality Hotline at (800) 535-1345. The Air Quality Index displays the predicted AQI value for the eight regions in New York State. It also displays the observed values for the previous day. Real-time monitoring data are also available on an individual monitor basis on the NYSDEC's air monitoring website. "Department of Environmental Conservation Air Monitoring website," <http://>

[www.nyaqinow.net/](http://www.nyaqinow.net/). Air quality measurements from New York's continuous monitoring network are updated hourly where available. Parameters monitored include ozone, fine particulate, carbon monoxide, sulfur dioxide, nitrogen oxides, methane/hydrocarbons, and meteorological data. The NYSDEC also provides ozone-specific information on its website, including the health-related effects of ozone pollution, at <https://www.dec.ny.gov/chemical/8400.html>. It also includes general measures the public can take to help reduce the formation of ozone, at <https://www.dec.ny.gov/chemical/8554.html>.

As described in the New York State Administrative Procedure Act (APA), and as required by 40 CFR 51.102, the NYSDEC must provide appropriate notice of each major SIP revision, and the public is afforded the opportunity to participate in the regulatory process by submitting written comments and petitioning for a public hearing on such revisions.

The EPA proposes to find that New York has met the requirements of CAA section 110(a)(2)(j) for public notification.

#### *Prevention of Significant Deterioration*

As detailed in the discussion of Element C, above, New York has a SIP-approved PSD/NSR program that covers all criteria pollutants and greenhouse gases, including ozone, which is contained in 6 NYCRR Part 231, "New Source Review for New and Modified Facilities," and which was approved by the EPA on November 17, 2010 (75 FR 70142). 6 NYCRR Part 231 regulates major sources under NSR (when the source is located in a nonattainment area) and PSD (when the source is located in an attainment area).

The EPA proposes to approve New York's infrastructure SIP with respect to the requirements of the PSD sub-element of CAA section 110(a)(2)(j).

#### *Visibility Protection*

Visibility Protection and regional haze program requirements under section 169A and B of Part C are being met by the NYSDEC through separate efforts. In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements under Part C do not change. As noted in the EPA's 2013 guidance, we find that there is no new visibility obligation triggered under section 110(a)(2)(j) when a new NAAQS becomes effective. There are thus no new applicable visibility protection obligations under section 110(a)(2)(j) resulting from the 2015 Ozone NAAQS revision, and the EPA is therefore not

acting on the visibility aspect of Element J.

*Element K: Air Quality Modeling/Data:* Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to the EPA upon request. The infrastructure SIP submittal affirms that the modeling procedures are in accordance with 40 CFR part 51, Appendix W, also known as the Guideline on Air Quality Models. The NYSDEC submittal cites 6 NYCRR Part 200.6, which defines "Acceptable ambient air quality," in support of its position that "when a new major source of emissions is coming online or an existing source is undertaking a modification that would lead to a significant increase in its potential to emit, NYSDEC will use modeling as necessary to affirm that compliance with the ozone NAAQS will be maintained." The submittal also cites 6 NYCRR 231-12, "Ambient Air Quality Impact Analysis," which sets forth the procedures and requirements for an air quality impact analysis. The NYSDEC submittal certifies that air quality modeling and analysis complies with the latest EPA guidance on the use of models in attainment demonstrations, and commits to continue to use air quality models in accordance with EPA's approved modeling guidance and to submit data to the Administrator if requested.

*Element L: Permitting Fees:* Section 110(a)(2)(L) requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's operating permit program. New York has an approved Title V operating permit program. 67 FR 5216 (February 5, 2002); see also 66 FR 63180 (Dec. 5, 2001); 61 FR 57589 (Nov. 7, 1996). The NYSDEC submittal identifies the following statutory and regulatory provisions that provide for the collection of permitting fees: ECL section 72-0302, "State air quality control fees" states that those who are required to obtain a permit, certificate or approval must submit to NYSDEC a per emission point fee; ECL section 72-0303, "Operating permit program fees," establishes a base fee; 6 NYCRR subpart 482-2, as revised effective June 17, 2018, and promulgated pursuant to the statutory authority granted to NYSDEC under ECL 72-0303, establishes an annual fee; and 6 NYCRR subpart 201-6.4(a)(7) which provides that the owner and/or operator of a stationary source

will pay the fees to NYSDEC consistent with the fee schedule established in 6 NYCRR subpart 482-2. The EPA is proposing to approve this Element.<sup>6</sup>

*Element M: Consultation/Participation by Affected Local Entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

The submittal provides information regarding the NYSDEC's authority to provide for consultation and participation in SIP development, in support of the EPA's proposed approval of this element. The submittal identifies the SIP Task Force, consisting of officials from 37 local governments and designated organizations of elected officials, which the NYSDEC utilizes as necessary for consultation on plans. Participation by local entities, as well as the public, is provided through 6 NYCRR Part 617, "State Environmental Quality Review."

#### **VIII. What action is the EPA taking?**

In summary, the EPA is proposing approval of the following elements and sub-elements of New York's Infrastructure SIP submittal for 2015 Ozone NAAQS: Section 110(a)(A) [emission limits and other control measures]; 110(a)(2)(B) [ambient air quality monitoring/data system]; 110(a)(2)(C) [program for enforcement of control measures and for construction or modification of stationary sources]; 110(a)(2)(D) [interstate pollution transport (sub-elements addressing PSD, visibility, and interstate and international pollution abatement only)]; 110(a)(2)(E) [adequate resources, state boards/conflict of interest, oversight of local governments and local authorities]; 110(a)(2)(F) [stationary source monitoring]; 110(a)(2)(G) [emergency power]; 110(a)(2)(H) [future SIP revisions]; 110(a)(2)(j) [consultation with government officials, public notification, and PSD]; 110(a)(2)(K) [air quality and modeling/data]; 110(a)(2)(L) [permitting fees]; and 110(a)(2)(M) [consultation/participation by affected local entities].

As previously stated, this proposed action does not address the section 110(a)(2)(D)(i)(I) (prongs 1 and 2) portions of the New York 2015 Ozone infrastructure SIP. The EPA will act on these portions of New York's infrastructure SIP in a separate rulemaking action. For the reasons

<sup>6</sup>Due to State revisions to 6 NYCRR 201-6, section 201-6.5(a)(7) in the EPA-approved New York Title V program is now numbered in the State's regulation as 6 NYCRR 201-6.4(a)(7).

provided in the discussion above, Element I and the visibility aspect of Element J are not being addressed.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting comments electronically following the directions in the **ADDRESSES** section of this **Federal Register**.

## IX. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, (August 10, 1999));

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

- Does not provide the 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)).

This proposed rulemaking pertaining to New York's section 110(a)(2) infrastructure requirements for the 2015 Ozone NAAQS is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (*see* 65 FR 67249 (November 9, 2000)).

### List of Subjects in 40 CFR Part 52

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

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

Dated: June 23, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, EPA Region 2.*

[FR Doc. 2021-14057 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2020-0466, FRL 10025-61-Region 2]

### Approval of Air Quality Implementation Plans; New York; Part 212, Process Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan concerning process operations. The intended effect of this revision is to streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. New York's comprehensive submittal also included Operating Permit Program requirements; however, the EPA will be acting on these revisions under a separate action.

**DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2020-0466, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

### FOR FURTHER INFORMATION CONTACT:

Marina Cubias-Castro, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3713, or by email at [castro.marina@epa.gov](mailto:castro.marina@epa.gov).

### SUPPLEMENTARY INFORMATION:

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- I. Background
- II. EPA's Evaluation of New York's Submittal
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. Background

The Environmental Protection Agency (EPA) proposes to approve New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212, now entitled, "Process Operations," which applies to process emission sources and/or emission points associated with a process operation, and which will streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. In addition, attendant revisions were made to 6 NYCRR Part 200, "General Provisions," in order to add a new Subdivision (cy) to define "Polychlorinated Dibenzo-para-dioxins and Polychlorinated Dibenzofurans" to Section 200.1. The EPA is proposing to approve these revisions, requested by



New York, to strengthen the effectiveness of New York's SIP.

## II. EPA's Evaluation of New York's Submittal

On February 5, 2019, the New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA the proposed revisions to Parts 200 and 212, along with supplemental materials, including documentation of the comment period and public hearings, and the NYSDEC's responses to public comments. On March 26, 2021, the NYSDEC submitted to the EPA additional proposed attendant revisions to Part 212, along with documentation of the comment period and public hearings, and the NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal. The State's March 26, 2021 comprehensive SIP submittal also proposes revisions to the Part 201 Operating Permit Program to require owners and operators of air contamination sources to obtain a permit or registration, and for Part 200.1 General Provisions for combustion installation, emergency power generating station internal combustion engine, fossil fuel and furnace. However, the EPA will act on these revisions in a separate action.

### Revisions to Parts 200 and 212

The EPA is proposing to approve the revisions to Parts 200 and 212. The revisions to Part 200 apply to a combination or mixture containing four to eight chlorinated dibenzo-*para*-dioxins and/or chlorinated dibenzofurans and/or specific polychlorinated biphenyls. The revisions to Part 212 apply to process emission sources and/or emission points associated with a process operation. These revisions streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. The EPA proposes to approve these revisions to strengthen the New York's SIP.<sup>1</sup>

The proposed changes to Part 212 include: Establishing consistent terminology between Part 212 Part 200, as well as 6 NYCRR Part 201, "Permits and Registrations"; establishing a Toxic Best Available Control Technology (T-BACT) standard for toxic air

contaminants; clarifying the interaction between Part 212 and the National Emission Standards for Hazardous Air Pollutants (NESHAPs); offering a streamlined approach for demonstrating compliance with regulatory standards for air contaminants by adopting a mass emission rate option; replacing the current Part 212 control requirement, which provides the NYSDEC Commissioner with discretion to establish the degree of required air cleaning, with a performance of air dispersion modeling analysis in order to demonstrate compliance with the NYSDEC Guideline Concentrations or National Ambient Air Quality Standards (NAAQS); controlling High Toxicity Air Contaminants (HTACs) to the greatest extent possible; and generally reorganizing and clarifying Part 212. Aside from renumbering and replacement of the term "Lower Orange County" with a list of regulated Orange County towns, this proposed rulemaking does not change the language of existing Section 212.10, "Reasonably Available Control Technology for Major Facilities," which is renumbered in the proposed revisions as Subpart 212-3. Neither does this proposed rulemaking change the language of existing Section 212.12, "Control of Nitrogen Oxides for Hot Mix Asphalt Production Plants," other than renumbering the section to Section 212-2.4 in line with the proposed new numbering. Under Sections 212-3.1(c)(3) and 212-4.1(c), process specific Reasonably Available Control Technology (RACT) determinations must be submitted to the EPA as SIP revisions and are effective only if approved by the EPA.

In addition, Subdivision 212-1.4(a) is revised to clarify its requirements. Subdivision 212-1.4(k) is revised to address toxic emissions from the iron and steel industry. Paragraph 212-1.5(e)(2) is revised to include an alternative toxic impact assessment method. Table 2 in Section 212-2.2 is revised to be consistent with Table 1 in Subpart 201-9 and to reflect the latest toxicological information. Table 6 in Subdivision 212-2.5(b) is revised to show permissible emission rates consistent with the formula presented in that Subdivision.

## III. Proposed Action

The EPA proposes to approve the revisions to New York's Title 6 of the New York Codes, Rules and Regulations Part 212, "General Process Emission Sources" and Section 200.1, "Definitions," both with a State effective date of April 30, 2015, along with additional revisions to Part 212,

with a State effective date of February 25, 2021, into New York's SIP, in order to strengthen enforcement of the State's air pollution control regulations. The EPA is soliciting public comments on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

## IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section II.

The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the 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 proposes to approve state law that meets federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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);

<sup>1</sup> The NYSDEC repealed Part 212, which was previously entitled, "General Process Emission Sources," and replaced it with the current version, entitled, "Process Operations." The NYSDEC proposes to revise the New York SIP to remove an outdated version of Part 212 that was previously approved by the EPA on July 12, 2013 (78 FR 41846), and incorporate the current March 26, 2021 version of Part 212.



- 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 the 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 proposed rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct compliance costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: June 26, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, EPA Region 2.*

[FR Doc. 2021-14055 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R08-OAR-2021-0004; FRL-10025-48-Region 8]

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; Control of Emissions From Existing Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA or the “Act”) section 111(d) state plan submitted by the Colorado Department of Public Health and Environment (CDPHE or the “Department”) on March 23, 2021. This state plan was submitted to fulfill the requirements of the CAA and is responsive to the EPA’s promulgation of Emission Guidelines and Compliance Times (EG) for existing municipal solid waste (MSW) landfills. The Colorado state plan establishes performance standards and other operating requirements for existing MSW landfills within the State of Colorado and provides for the implementation and enforcement of those standards and requirements by the Department.

**DATES:** Written comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0004, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](https://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air and Radiation Division, Environmental Protection Agency

(EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays and facility closures.

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-6396, email address: [lohrke.gregory@epa.gov](mailto:lohrke.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

### I. Background

On August 29, 2016, the EPA finalized revised Standards of Performance (NSPS) for new MSW landfills and EG for existing MSW landfills in 40 CFR part 60, subparts XXX and Cf, respectively. See 81 FR 59331 and 59313. These rulemaking actions were taken in accordance with section 111 of the CAA. Section 111(d) of the Act requires the EPA establish procedures for a state to submit a plan to the Agency that establishes standards of performance for any ‘existing’ source for any air pollutant, (1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108, or emitted from a source category which is regulated under CAA section 112, but (2) to which a new source performance standard under section 111(b) would apply if such existing source were a ‘new’ source. The EPA established general provisions for submittal of state plans for 111(d) sources in 40 CFR part 60, subpart B. State plan submittals for 111(d) sources must be consistent with the requirements of these general provisions and also establish performance standards and other requirements at least as stringent as those established by the relevant EG as published in 40 CFR part 60. Upon state plan submittal, the EPA reviews a state’s plan for consistency with the requirements of the general provisions and specific EG. If the state plan is complete and approvable with reference to these requirements, the Agency notifies the public, promulgates the plan in 40 CFR part 62 and delegates implementation and enforcement of the standards and requirements of the EG to the state under the terms of the state plan as published in the CFR. Today’s

action concerns the completeness and approvability of Colorado's 111(d) state plan for existing MSW landfills.

## II. Summary and Analysis of the Plan Submittal

The Executive Director of CDPHE submitted a final 111(d) state plan for existing MSW landfills on March 23, 2021 in response to the August 29, 2016 finalization of the revised EG published at 40 CFR part 60, subpart Cf. The EPA has reviewed the Colorado plan submittal in the context of the plan completeness and approvability requirements found in 40 CFR part 60, subparts B and Cf, as well as the general provisions for plan approval found in 40 CFR part 62, subpart A. The EPA is proposing with this action to approve Colorado's submittal. If EPA finalizes the proposed action in a future final rulemaking, EPA will promulgate the plan under 40 CFR part 62, subpart G.

The Colorado state plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR part 60, subpart B. Colorado has chosen to author a state plan document (the "111(d) Plan for Existing Municipal Solid Waste Landfills in Colorado") and provide all implementation and enforcement authority for all state plan requirements through revisions to the Code of Colorado Regulations (CCR). Specifically, the State has appropriately incorporated all general EG performance standards and other source requirements in 5 CCR 1001–8 and has given more specific instruction to designated facilities within the state plan document. Both the adopted state plan document and the relevant CCR section, as well as all other relevant plan submittal materials may be found in the docket for today's action. Necessary State legal and enforcement authorities required for plan approval are located elsewhere in Colorado statute, rules and regulations and have been reviewed and approved of by the EPA in the course of prior section 111(d) or 111(d)/129 state plan approvals. See 40 CFR 62.1350–1400. Following the EPA's review of the submittal materials, the Agency finds the state plan package to be approvable according to all plan requirements.

Analysis of the submitted state plan's completeness and approvability, with reference to the relevant general and source category specific plan requirements of 40 CFR part 60, subparts B and Cf, and a detailed explanation of the rationale supporting this proposed approval is available in

the Technical Support Document (TSD) in the docket of this proposed rule.

## III. Proposed Action

The EPA is proposing to approve the Colorado section 111(d) state plan for MSW landfills. The state plan was submitted in full compliance with the requirements of 40 CFR part 60, subparts B and Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart G to reflect this approval action. This approval is based on the rationale provided in section II of this preamble and discussed in detail in the TSD associated with this rulemaking action. The Agency's approval is in accordance with the general provisions of plan approval found in 40 CFR part 60, subpart B and in part 62, subpart A of that Title and is pursuant to the Agency's role under 42 U.S.C. 7411(d). The EPA's proposed approval of the Colorado plan is limited to those landfills that meet the criteria established in 40 CFR part 60, subpart Cf and grants the State authority to implement and enforce the performance standards and source requirements of the EG, except in those cases where authorities are specifically reserved for the EPA Administrator or his designee. Authorities retained by the EPA Administrator are those listed in 40 CFR 60.30f(c).

## IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference CDPHE and Colorado Air Quality Control Commission regulations regarding MSW landfills discussed in section II of this preamble. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA–R08–OAR–2021–0004, at <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d) state plan submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR 62.02(a). Thus, in reviewing 111(d) plan submittals, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA and the relevant provisions of 40 CFR part

60. Accordingly, this action merely proposes to approve 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, the Colorado 111(d) state plan for existing MSW landfills is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting

and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 25, 2021.

**Debra H. Thomas,**

*Acting Regional Administrator, EPA Region 8.*

[FR Doc. 2021-14029 Filed 6-30-21; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 15 and 74

[ET Docket No. 21-115, RM-11821; FCC 21-46; FR ID 26756]

#### Wireless Microphones in the TV Bands, 600 MHz Guard Band, 600 MHz Duplex Gap, and the 941.5-944 MHz, 944-952 MHz, 952.850-956.250 MHz, 956.45-959.85 MHz, 1435-1525 MHz, 6875-6900 MHz and 7100-7125 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission aims to enhance the spectral efficiency of wireless microphones by permitting a recently developed type of wireless microphone system, termed herein as a Wireless Multi-Channel Audio System (WMAS), to operate in certain frequency bands. This emerging technology would enable more wireless microphones to operate in the spectrum available for wireless microphone operations, and thus advances an important Commission goal of promoting efficient spectrum use. The Commission proposes to revise the applicable technical rules for operation of low-power auxiliary station (LPAS) devices to permit WMAS to operate in the broadcast television (TV) bands and other LPAS frequency bands on a licensed basis. The Commission also proposes to update the existing LPAS and wireless microphone rules to reflect the end of the post-Incentive auction transition period and update references to international wireless microphone standards.

**DATES:** Comments are due August 2, 2021. Reply comments are due August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Hugh Van Tuyl, Office of Engineering and Technology, 202-418-7506, [Hugh.VanTuyl@fcc.gov](mailto:Hugh.VanTuyl@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, ET Docket No.

21-115, RM-11821, FCC 21-46, adopted and released April 22, 2021. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: <https://www.fcc.gov/document/fcc-looks-open-door-new-wireless-microphone-technologies-0>. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes to revise the applicable technical rules for operation of part 74 low-power auxiliary station (LPAS) devices to permit a recently developed type of wireless microphone system, termed herein as a Wireless Multi-Channel Audio System (WMAS), to operate in the broadcast television (TV) bands and other part 74 LPAS frequency bands on a licensed basis. This emerging technology would enable more wireless microphones to operate in the spectrum available for wireless microphone operations, and thus advances an important Commission goal of promoting efficient spectrum use. The Commission propose and seek comment on technical rules for WMAS operations under our part 74 LPAS rules for licensed wireless microphone operations as well as the particular frequency bands in which WMAS wireless microphones would be permitted to operate. The Commission also seeks comment on whether to permit WMAS under the part 15 rules that allow unlicensed wireless microphone operations in the TV bands, the 600 MHz guard band, and 600 MHz duplex gap. The Commission also proposes to update our existing part 74 LPAS and part 15 technical rules for wireless microphones, which already rely on certain European Telecommunications Standards Institute (ETSI) standards, to incorporate the latest version of that standard where appropriate. Finally, the Commission proposes to update the wireless microphone rules to reflect the end of the post-Incentive auction transition period. Its aim in this proceeding is to enhance the spectral efficiency of wireless microphone use. The Commission does not intend to alter the existing spectrum rights—or

expectations regarding access and availability of spectrum—vis-à-vis all the various authorized users, whether broadcast licensees, white space device users, the wireless microphone users themselves, or others, that share frequency bands with wireless microphones.

2. *Background.* Many types of users employ wireless microphones in a variety of settings including theaters and music venues, film studios, conventions, corporate events, houses of worship, and internet webcasts. Wireless microphone operations range from professional uses, with the need for numerous high-performance microphones, to an individual consumer's use of a handheld microphone at a conference or in a karaoke bar. These devices are authorized for operations both on a licensed and unlicensed basis, depending on the frequency band. Most licensed wireless microphones operate under the part 74 rules for low power auxiliary stations (LPAS) on a secondary basis. Under those rules, they can operate on unused spectrum in the TV bands (both VHF and UHF), a 4-megahertz portion of the 600 MHz duplex gap, certain frequencies in the 900 MHz band, the 1435-1525 MHz band (shared with federal Aeronautical Mobile Telemetry (AMT) service), and portions of the 7 GHz band. Entities eligible for part 74 licenses include broadcast station licensees and networks, certain cable television operators, motion picture/TV producers, and professional sound companies and venue operators that routinely use 50 or more wireless microphones. Unlicensed wireless microphones also operate in certain bands under the part 15 rules—including the VHF and UHF-TV bands where they generally share the same basic technology used by licensed LPAS wireless microphones (although unlicensed operations are limited to lower, more restrictive power levels than licensed operations).

3. Historically and currently, most wireless microphones—both licensed and unlicensed—operate on unused spectrum in the TV bands where they share use of unused TV band spectrum with unlicensed white space devices. The spectrum available for these devices has decreased in recent years as a result of the Commission's actions that repurposed some portions of the TV bands for wireless services and repacked the TV bands. In 2015 and 2017, the Commission took several actions focused either on promoting more efficient use of the spectrum by both licensed and unlicensed wireless microphone operations in the repacked

TV bands, 600 MHz guard band, and 600 MHz duplex gap, or finding spectrum in additional frequency bands that could be used to accommodate licensed wireless microphone operations.

4. *Petition for rulemaking.* On August 17, 2018, Sennheiser Electronic Corporation (Sennheiser) filed a petition for rulemaking requesting that the Commission modify the part 74 LPAS rules for licensed wireless microphones. Specifically, it requests that the Commission define a new class of wireless microphone, which it terms a “Wireless Multi-Channel Audio System (WMAS),” that digitally combines the signals of multiple LPAS wireless microphones into a wider channel than currently permitted in the TV bands or other LPAS frequency bands. Sennheiser states that other wireless microphone manufacturers are developing similar systems. Sennheiser specifically requests that such systems be permitted to operate with a maximum channel bandwidth of 6 megahertz, the same size as an entire TV channel, rather than 200 kilohertz channels as the rules currently allow for LPAS devices in the TV bands, and that they be permitted to operate not only in the TV bands, but also in the 600 MHz duplex gap and in the 941.5–944 MHz, 944–952 MHz, and 1435–1525 MHz bands that also are available for licensed LPAS wireless microphone operations. Sennheiser explains that, rather than placing each wireless microphone on its own separate frequency, as under current technical rule specifications, WMAS digitally combines the signals from multiple devices into a 6-megahertz channel, eliminating intermodulation and permitting denser use of the spectrum while lowering the average power spectral density across the channel. Sennheiser notes that a potential downside of authorizing WMAS is the possibility that an operator connects too few devices on the wider channel to realize WMAS’s potential for improved spectrum efficiency, and proposes rules that would require WMAS devices to operate a minimum of 12 wireless microphones in a 6-megahertz channel. Sennheiser asserts that this technology will improve spectrum efficiency by allowing an increased number of devices to operate in a 6-megahertz channel and thus help to counter a severe spectrum shortage for wireless microphones.

5. The Commission sought public comment on the Sennheiser petition. Two wireless microphone manufacturers, Alteros and Shure, filed comments, as did Microsoft, whose concern focuses on white space device

operations. Sennheiser, Microsoft, and the Aerospace and Flight Test Radio Coordinating Council (AFTRCC), which must approve any LPAS operations in the 1435–1525 MHz band, filed reply comments. Commenters generally support increasing the spectral efficiency of wireless microphones, but raise some potential concerns about Sennheiser’s proposals. In particular, Alteros and Microsoft express concerns that WMAS not adversely affect the coexistence of wireless microphone systems made by different manufacturers and request that the Commission not adopt rule changes that benefit only a single manufacturer. Alteros, Shure, and Microsoft argue that the minimum number of wireless microphones that should be required in a 6-megahertz band should be higher than the 12 suggested by Sennheiser. In addition, Microsoft expresses concern about the potential impact that permitting WMAS operations may have on white space device operations. While Microsoft does not oppose using WMAS on TV band frequencies and in the 4-megahertz portion of the 600 MHz duplex gap in which licensed LPAS wireless microphones are authorized, it opposes permitting WMAS operations in the unlicensed 6-megahertz portion of the 600 MHz duplex gap, which it views as critical for white space devices because this spectrum is available for white space device operations throughout the United States. Alteros asks that any rule changes apply to all part 74 LPAS frequency bands, including the expanded 900 MHz bands and the 1435–1525 MHz band. In its initial comments, Shure suggests that the Commission consider permitting WMAS in only certain bands as a preliminary matter, and in particular consider not permitting WMAS operations in the 1435–1525 MHz band initially due to concerns that specific equipment authentication and software-based controls for coordination with AFTRCC in that band are under development, but in more recent filings Shure now indicates its support for permitting WMAS in all frequency bands available for licensed wireless microphone operations under the part 74 LPAS rules—including the TV bands, the 600 MHz duplex gap, and the 900 MHz bands, the 1435–1525 MHz band, and the 7 GHz band. AFTRCC states that it has no objection to the petition as long as the current coordination and authentication requirements for the 1435–1525 MHz band are not modified. Shure and Microsoft also generally request that the Commission examine the compatibility of WMAS with other

systems or operations in the frequency bands in which WMAS would operate.

6. In its most recent *ex parte* filings, submitted in December 2020 and January 2021, Shure recommends that the Commission update the technical rules consistent with the updated 2017 version of the ETSI standard concerning wireless microphones. Shure notes that this latest version already permits certain types of WMAS devices in Europe and thus would allow the United States to harmonize its wireless microphone rules and promote greater spectral efficiency for wireless microphone operations. It also notes that updating the rules to reflect the newest version of the ETSI standard would allow the Commission to reference a single document for both the single carrier emission limits as well as the limits for WMAS.

7. *Discussion.* The Commission proposes to amend the part 74 LPAS technical rules to permit the use of WMAS in most of the LPAS frequency bands where wireless microphones are currently permitted to operate. If adopted, WMAS devices would be a new type of wireless microphone system that, by using wider channelization than currently is permitted for wireless microphones under part 74 along with a more efficient operating protocol, would enable more microphones to be deployed within the same amount of spectrum. Three wireless microphone manufacturers—Sennheiser, Alteros, and Shure—request that the Commission permit WMAS in certain frequency bands, and Microsoft and AFTRCC also generally support WMAS provided that their concerns can be addressed. Specifically, the Commission proposes and seeks comment on the definition of WMAS, the frequency bands in which WMAS would be permitted, and the appropriate technical requirements (*e.g.*, spectral efficiency, channel bandwidth, maximum power, and emission masks) that would govern operation of these systems. As part of its proposal, the Commission specifically proposes applying technical rules for WMAS consistent with the recently updated ETSI standard for WMAS. The Commission also takes this opportunity to propose updating its existing technical rules for currently authorized part 74 LPAS wireless microphones, which already rely on certain ETSI standards, in order to incorporate the applicable portions of the recently updated ETSI standard. In addition, the Commission also seeks comment on whether the Commission should revise the part 15 technical rules for unlicensed wireless microphone devices

that operate in the TV bands, the 600 MHz guard band, and the 600 MHz duplex gap to permit WMAS operations for those devices in some or all of those frequency bands, and whether the Commission should revise the part 15 wireless microphone rules to require use of an updated ETSI standard. Finally, the Commission proposes and seeks comment on updating its rules to reflect the end of the post-Incentive Auction transition.

8. *Revisions to the part 74 LPAS Rules to Authorize WMAS.* In its petition, Sennheiser proposes that the Commission use the term “Wireless Multi-Channel Audio System” for this new type of wireless microphone device, and to broadly define this system as “[a] system that digitally combines the signals of multiple low power auxiliary station devices onto one radio-frequency channel.” Shure agrees. Alteros asks that any definition not limit the system to use by a single company such as Sennheiser. The Commission notes that the most recent version of the ETSI standards uses the same name for this system, “Wireless Multi-Channel Audio System,” though it does have a slightly different definition, namely a “wireless audio transmission system[] using broadband transmission technique for microphone and in-ear monitor systems, and other multichannel audio [Programme Making and Special Events] use.”

9. *Discussion.* The Commission proposes to adopt the terminology proposed by Sennheiser, as well as the definition it proposes. The Commission seeks comment on this proposed designation and definition. Is it appropriate for the type of wireless microphone system the Commission proposes to permit? Would a different name or definition be more appropriate? If so, how should the proposed name or definition be modified to provide more accuracy or a better description of WMAS?

10. *Frequency Bands of Operation.* In its petition, Sennheiser specifically requests that WMAS be permitted to operate in the TV bands, in the 600 MHz duplex gap, and in the 941.5–944 MHz, 944–952 MHz, and 1435–1525 MHz bands that also are available for licensed LPAS wireless microphone operations. Alteros asks that any WMAS apply to all part 74 LPAS frequency bands, including the expanded 900 MHz bands and the 1435–1525 MHz band, while Shure similarly supports permitting WMAS in all frequency bands available for licensed wireless microphone operations under the part 74 LPAS rules—including the TV bands (VHF and UHF), the 600 MHz duplex gap, the

900 MHz bands, the 1435–1525 MHz band, and the 7 GHz band.

11. *Discussion.* The Commission proposes to allow WMAS to operate in most of the bands where part 74 wireless microphones are permitted to operate, including the VHF–TV bands (54–72 MHz, 76–88 MHz and 174–216 MHz), the UHF–TV band (470–608 MHz), the 653–657 MHz segment of the 600 MHz duplex gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands. These are all of the frequency bands available for LPAS operations in which the Commission believes that wireless microphones using a wider channelization system are technically feasible and thus could enable more efficient use of the limited spectrum available for wireless microphone operations. The Commission is not, however, proposing to allow WMAS operation in the 26.100–26.480 MHz, 161.625–161.775 MHz, 450.000–451.000 MHz and 455.000–456.000 MHz bands because the Commission believes that the available spectrum (1 megahertz or less in each band) make them less suited for WMAS operation.

12. The Commission seeks comment on this proposal. Are all of the bands where the Commission has proposed to permit WMAS operation suitable for such operation? The Commission’s goal is to promote more efficient use of spectrum for LPAS operations and it is mindful that not all LPAS operations would use WMAS and that other operations share the affected frequency bands. Thus, the Commission seeks to permit WMAS while not adversely affecting these other operations. Are there special considerations that should be taken into account for any of the bands proposed for WMAS? In the TV bands wireless microphones are secondary to broadcast TV stations and share use of spectrum unused by broadcasters with white space devices. Wireless microphones are secondary to both federal and non-federal systems operating in the 941.5–944 MHz band and the 1435–1525 MHz band and are secondary to broadcast or other licensed services in the 944–952 MHz and portions of the 952–960 MHz, the 6875–6900 MHz and the 7100–7125 MHz bands, and wireless microphone operations must be coordinated under specified coordination requirements. Would WMAS operations in any of the proposed bands raise concerns about adversely affecting incumbent systems or authorized users? For instance, when coordinating WMAS operations, are there any additional interference

mitigation techniques or technologies that would be necessary or can be used to help prevent harmful in-band interference? Are specific rules needed to reflect that all uses continue to be available and that users have flexibility to operate equipment and devices that best meet their needs? In light of recent changes to the 6 GHz band, the Commission invites specific comment on WMAS operation in the 6875–6900 MHz and the 7100–7125 MHz bands. To what extent are LPAS operations making use of these bands? If the Commission authorizes WMAS generally, how might this affect use of these bands by part 74 wireless microphone operations? Should WMAS not be authorized in these bands, or should part 74 wireless microphones no longer be permitted to operate in these bands altogether, considering the recent changes and expected future usage of this spectrum?

13. Are there any other LPAS bands where the Commission should permit WMAS to operate? Would it be feasible or appropriate to allow WMAS operation in any of the bands that the Commission has proposed to exclude? Is there a minimum amount of bandwidth necessary for WMAS to operate? How does the amount of available channel bandwidth affect efficiency? Does the number of microphones that can be supported increase linearly with increasing spectrum or is there a different relationship? Finally, the Commission asks that commenters discuss the costs and benefits associated with their recommended approach regarding the authorization of WMAS in particular frequency bands. In particular, the Commission seeks information and data about operations in these bands and any other bands that commenters suggest for WMAS use. This information and data should include details regarding current wireless microphone usage, such as quantitative measures describing how many microphones are used per channel at various locations, how wireless microphones are used and the types of users as well as how these measures, uses and users would change if WMAS were used instead of currently authorized wireless microphones that operate using narrower bandwidths.

14. *Technical Requirements.* In this section the Commission proposes and seeks comment on technical requirements for WMAS devices. Because the current part 74 rules for wireless microphones are based on the use of narrower bandwidths than would be used for WMAS operation, the Commission will need to specify appropriate and possibly different

technical requirements for these wider bandwidth systems for wireless microphones, including output power limits and emission masks.

15. *Bandwidth.* The part 74 rules limit wireless microphones operating in the TV bands and 600 MHz duplex gap to a 200 kilohertz maximum bandwidth. Wireless microphones operating in the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands do not have bandwidth limits specified in the part 74 rules, but are required to meet the emission masks specified in the 2011 ETSI wireless microphone standard, *i.e.*, ETSI EN 300 422–1 v1.4.2 (2011–08) [“EN 300 422–1 (2011)”], which precludes the use of wide bandwidths, *e.g.*, 1 megahertz or greater. Accordingly, the Commission’s existing rules would preclude WMAS operations as proposed by Sennheiser (*i.e.*, use of a 6-megahertz channel for the wireless microphone system). The Commission notes that the most recent version of the ETSI standard, established in 2017, permits WMAS to operate using wider channels up to 20 megahertz.

16. *Discussion.* The Commission proposes to allow WMAS devices to use a 6-megahertz maximum bandwidth as suggested by Sennheiser and Shure, subject to any technical or other limitations inherent to the particular frequency band. A 6-megahertz channel corresponds to the size of channels in the TV bands where many part 74 wireless microphones currently operate. The Commission also notes that no commenter suggested a larger channel size for WMAS. Under the Commission’s proposal, the bandwidth of a WMAS device could be smaller than 6 megahertz, either by system design or as needed to comply with the amount of spectrum available under the Commission’s rules. For instance, the bandwidth of a WMAS device for licensed wireless microphone operations in the 4 megahertz of spectrum available for LPAS operations in the 600 MHz duplex gap (653–657 MHz) would be limited to 4 megahertz, and the amount of spectrum available in each of the 952.850–956.250 MHz and 956.45–959.85 MHz bands is less than 6 megahertz. The Commission further proposes that for WMAS devices operating in the TV bands, the 6 megahertz (or less) WMAS channel must fall entirely within a single TV channel (2–36) that is available for part 74 wireless microphones in accordance with the separation requirements under § 74.802(b). This requirement will prevent a WMAS device from occupying portions of two unused TV channels

simultaneously, potentially excluding other uses that require a full 6-megahertz channel, such as unlicensed white space devices or other wireless microphone operations using WMAS.

17. The Commission seeks comment on these proposals. In particular, it seeks comment on whether 6 megahertz is the appropriate maximum channel size for WMAS part 74 LPAS wireless microphone devices in the TV bands and other frequency bands (apart from the smaller sized 4-megahertz portion of the 600 MHz duplex gap), or whether the Commission should allow larger channel sizes. For example, Shure notes that the 2017 ETSI standard EN 300 422–1 V2.1.2 (2017–01) [“EN 300 422–1 (2017)”] permits a channel bandwidth of up to 20 megahertz for WMAS systems. If the Commission were to allow channel sizes greater than 6 megahertz, in which bands should the Commission allow them? For instance, should a wider channel for WMAS be permitted only outside the TV bands (*e.g.*, in the 944–952 MHz band, the 1435–1525 MHz band or the 6875–6900 MHz and 7100–7125 MHz portions of the 7 GHz band) that do not involve pre-existing 6-megahertz channels? Are 6-megahertz wide channels for WMAS appropriate in all of the bands outside the TV bands (for example in the 944–952 MHz band where other services use a channel plan consisting of 25 kHz segments)? Should WMAS operating in bands outside of the TV bands also be required to operate within the limits of a single channel as defined by the channel plans of the other services using those bands (for example in the 6875–6900 MHz band where the channel plans of other services are based on 25 megahertz channel sizes, should WMAS systems be required to fall entirely within one of the existing channels)? Should wider channels be allowed within the TV bands at locations where there are two or more contiguous unused channels available for licensed LPAS wireless microphone use?

18. In addition, the Commission seeks comment on co-existence between WMAS and other operations with which it would share the spectrum. Would wider channel bandwidths make spectrum co-existence and sharing more difficult with narrower bandwidth wireless microphones, or between WMAS devices produced by different manufacturers? Should the Commission adopt any requirements to better enable co-existence and sharing between different types of wireless microphone systems? Would permitting channels wider than 6 megahertz for WMAS in the TV bands potentially alter the

balance between licensed LPAS wireless microphone operations and white space channels in the TV bands? The Commission also seeks comment on whether there should be a minimum bandwidth specified for WMAS. For example, because the Commission proposed to exclude spectrum bands where 1 megahertz or less is available for wireless microphones, should the Commission restrict WMAS to a minimum 1-megahertz bandwidth? Is there a different minimum that should be specified, or should the Commission not specify a minimum bandwidth at all? The Commission seeks comment on how specifying a minimum or maximum bandwidth may affect spectrum efficiency and the ability for systems of different types (*e.g.*, currently authorized wireless microphones and WMAS wireless microphones) to co-exist. The Commission also seeks comment on the costs and benefits with respect to equipment cost and spectrum usage of specifying specific minimum and maximum bandwidths for WMAS.

19. *Spectral Efficiency.* In its petition requesting that the Commission authorize WMAS, Sennheiser notes that a potential downside is the possibility that an operator connects too few devices on the wider channel to realize WMAS’s potential for improved spectrum efficiency. To ensure that users operating WMAS would use spectrum as or more efficiently than currently authorized wireless microphones (*e.g.*, wireless microphones restricted to 200 kilohertz in the TV bands), Sennheiser proposes that operators be required to operate a minimum of 12 wireless microphones on a WMAS in a 6-megahertz channel. Alteros contends that there should be a minimum of 24 wireless microphones in a 6-megahertz channel, while Shure proposes WMAS use a minimum of 3 wireless microphones per 1-megahertz of spectrum. Microsoft states more generally that the Commission should encourage that WMAS maximize efficient use.

20. *Discussion.* Sennheiser, Alteros, and Shure agree that the Commission should establish spectral efficiency requirements for WMAS devices to ensure sufficient use of the spectrum by any WMAS, although they disagree on what those should be. As suggested by Shure, the Commission proposes that WMAS devices comply with a spectral efficiency requirement of at least three audio channels per megahertz (18 audio channels per 6 megahertz) to ensure that these wider bandwidth devices do not occupy more spectrum than necessary. This proposal is consistent with ETSI’s

requirement that WMAS must have at least one mode that supports a minimum of three audio links per megahertz. The Commission believes that Sennheiser's suggestion of 12 channels per 6 megahertz does not represent an improvement over what is currently achievable with existing technology. The Commission is also concerned that Alteros' suggestion of 24 channels per 6 megahertz might not be achievable in some cases, such as when an operator needs to use many very high-quality audio channels. The Commission therefore proposes to require WMAS devices to operate with a minimum spectral efficiency of three audio channels per megahertz as suggested by Shure. The Commission believes that a spectral efficiency requirement specified over one megahertz may be more appropriate and more flexible than a requirement specified over the WMAS device maximum channel bandwidth because it provides an easier method to scale total power to different bandwidths, thus allowing manufacturers to produce devices in which the bandwidth could be varied as necessary based on the number of audio channels required and the spectrum available for use in any particular frequency band while also ensuring more efficient use of spectrum for wireless microphone operations.

21. The Commission seeks comment on these proposals. In particular, the Commission seeks comment on whether the proposed spectral efficiency metric is appropriate. How does this metric, which would require at least 18 wireless microphones within a 6-megahertz channel, compare to what is achievable using the types of analog and digital microphones permitted under existing rules? How should an audio channel be defined in this context? Should the metric be higher or lower, and if so why? The Commission also seeks comment on whether there are any other spectral efficiency metrics that the Commission could specify in place of, or in addition to, the number of audio channels. For example, the audio for actors in a stage production or vocalists performing a concert may need the highest quality audio while lower quality audio may be acceptable for other uses. Should a spectral efficiency requirement consider the type of audio channel, *e.g.*, voice or high quality, in a specification of the minimum number of channels required per megahertz of spectrum? Alternatively, would a minimum data rate (*e.g.*, X bits per second per megahertz) be more appropriate rather than tying efficiency to number of audio channels? If so, what

data rate would be appropriate and over what bandwidth? Commenters should provide details regarding advantages or disadvantages of such an approach as compared to the proposed three audio channel per megahertz efficiency requirement. How could a spectral efficiency requirement be enforced at the equipment authorization level, at the time of licensing, and/or in the field? That is, in addition to ensuring that the equipment can meet any spectral efficiency requirement during the equipment approval process, are there ways to ensure that WMAS users actually operate in accordance with any spectral efficiency requirement? Should a condition be placed on a LPAS license stating the requirement that users employing WMAS must meet that standard?

22. What are the costs and benefits of establishing a spectral efficiency requirement for WMAS devices? Is a higher efficiency requirement more difficult or expensive to meet, and does it limit wireless microphone operators' ability to make use of the spectrum? On the other hand, what are the costs of not establishing a spectrum efficiency requirement, or not taking other steps to ensure that WMAS would be used efficiently, with respect to white space device operations or other users' operations that share use of the same frequency bands that would be available for WMAS use? The Commission seeks any quantitative support regarding the answers to these questions.

23. *Output Power.* Under the current part 74 rules, wireless microphones in the TV bands are limited to 50 milliwatts equivalent isotropically radiated power (EIRP) in the VHF band, 250 milliwatts conducted power in the UHF band, 20 milliwatts EIRP in the duplex gap, 250 milliwatts conducted power in the 1435–1525 MHz band, and 1 watt conducted power in all other bands. These power limits apply to each individual wireless microphone, so that if, for example, there are 12 wireless microphones operating in close physical proximity within a single 6-megahertz channel, the total power within that channel will be 12 times greater than if there were a single wireless microphone. The Commission notes that, as a practical matter, wireless microphones generally operate at less than the maximum power the rules allow due to a number of considerations, such as the need to extend battery life, reduced interference between wireless microphones, and because the maximum power is simply not necessary in many applications.

24. Sennheiser did not request higher power for WMAS devices than the part

74 rules currently allow for wireless microphones. It states that WMAS devices would operate at a lower power spectral density (PSD) which allows for greater frequency re-use, thereby improving spectrum efficiency over a geographic region with heavy wireless microphone use. However, Shure argues that the Commission should clarify that the current part 74 power limits are limits per channel, and that WMAS should be allowed to use PSD levels up to 750 milliwatts per megahertz in the UHF-TV band and most other bands available for wireless microphones under part 74. Shure argues that this PSD limit is equivalent to a single channel power limit of 250 milliwatts (*i.e.*, three audio channels per megahertz).

25. *Discussion.* The Commission proposes to allow WMAS to operate at up to the same maximum power levels as other part 74 LPAS devices, but seeks comment on whether it should allow higher power levels as Shure suggests or make other changes to the power limits for WMAS. What is the appropriate maximum power level for each of the bands where WMAS would operate? Should the power limit be expressed in terms of PSD, absolute maximum power, or some combination of the two, and should they be conducted or radiated (EIRP) limits? Should the power be capped or permitted to scale with the number of audio channels being delivered? For example, should more power be permitted if a WMAS provides more channels than any minimum the Commission might specify? For example, if the Commission were to adopt its proposal to require at least three audio channels per megahertz, should the Commission permit more power for a device that provides four or more audio channels per megahertz? How does the power the Commission permits and/or the way it specifies it affect re-use distance between systems? Commenters should specify how whatever power limit it supports provides the ability to re-use WMAS in crowded areas (*e.g.*, among the many theaters in New York's theater district). Should WMAS devices be required to incorporate transmit power control to limit power to the minimum necessary for a particular application? What are the costs and benefits of higher or lower power limits and a requirement to incorporate transmit power control? To the extent that the higher power levels are considered, as proposed by Shure, should they be permitted in particular bands or in all bands? For instance, should higher power be precluded from the 6875–6900 MHz and



7100–7125 MHz bands in light of recent changes to the 6 GHz band?

26. The Commission also seeks comment on the potential for WMAS to affect licensed broadcast services in the TV bands, other uses of the TV bands such as unlicensed white space devices, as well as other licensed and unlicensed operations where authorized in portions of the 900 MHz, 1.4 GHz, and 7 GHz bands. How would WMAS power levels and wider bandwidths affect the potential of these devices to cause harmful interference to broadcast services in the TV bands or to authorized services in other bands? Is WMAS more or less likely to affect broadcast services or other authorized services than the wireless microphones currently permitted under part 74? Similarly, what impact would WMAS have on unlicensed white space devices that operate in the TV bands and in the upper 6-megahertz portion of the 600 MHz duplex gap? Would WMAS make it more difficult for white space devices to operate, or would the potentially greater spectral efficiency of WMAS have a positive effect on the availability of spectrum for white space devices by reducing the number of TV channels that wireless microphones would need to use in a given area? Could WMAS devices and currently authorized wireless microphones co-exist within the same channel? Or do they need to operate on distinct channels thereby potentially using more spectrum than is used today when only currently authorized microphones are used? How would the power limit affect such co-existence?

27. In addition, the Commission seeks comment on whether there is a need to modify the rules to resolve an inconsistency in the power limits for part 74 wireless microphones that operate in the TV bands. Section 74.861(e)(1) specifies the power limit for wireless microphones in the UHF–TV band in terms of conducted power, while the power limits for wireless microphones in the VHF–TV bands and the duplex gap are expressed in terms of EIRP. This difference stems from the 2015 *Wireless Microphone R&O* when the Commission changed the power limit for wireless microphones in the VHF–TV band from a conducted limit to an EIRP limit to make the VHF–TV band more usable by wireless microphones. However, the Commission did not address the power limit for wireless microphones in the UHF–TV band in that proceeding, leaving it unchanged as a conducted power limit (250 milliwatts). Should the Commission modify the power limit for part 74 wireless microphones in the UHF–TV

band (470–608 MHz) from a conducted limit to an EIRP limit, consistent with rules for part 74 wireless microphones in the VHF–TV bands and part 15 wireless microphones in both the VHF and UHF–TV bands? What are the advantages and disadvantages of such a change? What would be the impact in terms of benefits and costs on manufacturers and users? How would such a change affect the interference potential of part 74 wireless microphones, either within or outside of the UHF–TV band? How would such a change affect existing, already approved microphones? Commenters should provide information regarding why any equipment or uses may need any accommodations, such as grandfathering, based on any advocated changes in this matter.

28. *Emission Mask.* Part 74 wireless microphones operating in the bands where the Commission is proposing to allow WMAS operations are currently required to comply with emission masks associated with the 2011 version of ETSI EN 300 422–1 (2011), which the Commission adopted for wireless microphones under the part 74 LPAS rules in 2015. As discussed above, these emission masks limit wireless microphones to bandwidths of less than one megahertz and are therefore not suited to WMAS. An updated ETSI standard, EN 300 422–1 (2017), specifies an emission mask that is applicable to WMAS (as defined in the ETSI standard), and Shure suggests in a recent *ex parte* filing that the Commission incorporate that updated version into the Commission's rules. Shure also suggests that the Commission adopt a requirement that transmitter intermodulation distortion comply with limits in section 8.5.3 of EN 300 422–1 (2017) and that the Commission modify the existing part 74 wireless microphone rules to specify the transmit masks in this standard. Shure underscores that by updating the Commission's rules consistent with the ETSI standards for wireless microphones, including WMAS, the Commission would be harmonizing our rules and thereby benefit the wireless microphone community. Shure also notes that ETSI currently is in the process of further revising and updating the standards relating to WMAS, and Shure recommends that the Commission adopt the updated standards if ETSI adopts them.

29. *Discussion.* The Commission proposes to require WMAS devices to comply with the updated 2017 version of ETSI standard EN 300 422–1 (2017) concerning the transmit mask as suggested by Shure. This proposal is

consistent with the current part 74 wireless microphone rules that require wireless microphones to comply with ETSI transmit emission masks (2011 version). The Commission proposes to require that WMAS emissions outside the band where the emission mask is defined comply with the spurious emission limits in Section 8.4 of ETSI EN 300 422–1 (2017). If ETSI updates its applicable standards for WMAS during the pendency of this rulemaking, the Commission requests comment on whether the Commission should instead adopt the later version instead of the 2017 version. In proposing to update its technical rules by adopting the 2017 ETSI standard relating to WMAS, the Commission seeks to achieve the additional benefits associated with harmonizing the Commission's rules with the latest technologies for wireless microphones.

30. The Commission seeks comment on its proposal and on the costs and benefits associated with it. Are the ETSI transmit emission masks for WMAS devices and the spurious emission limits sufficient to protect authorized services in adjacent bands? Will they adequately protect broadcast TV and other authorized services? Will these emission limits allow for sharing spectrum between wireless microphone systems, both wider bandwidth WMAS and narrower bandwidth devices operating under the current LPAS rules? What impact would WMAS operating under these limits have on white space devices? Would different emission limits be more appropriate, and if so, which ones and why? What are the costs and benefits of requiring devices to meet the ETSI emission limits or any alternative limit suggested by commenters?

31. The Commission also seeks comment on whether there is a need to adopt the ETSI intermodulation distortion limits as suggested by Shure. Shure requests that the Commission make clear that combining multiple users on a single antenna is conceptually distinct from the applicable emissions mask, and suggests that transmitter intermodulation distortion comply with limits in EN 300 422–1 (2017). Is there a need for intermodulation distortion limits as Shure suggests? If so, are the ETSI limits appropriate or would some other limits be more appropriate? What are the costs and benefits of adopting ETSI or some other intermodulation distortion limits?

32. *Other Considerations.* The Commission also seeks comment on whether there are other technical issues that it should consider and address when establishing rules permitting use

of WMAS for wireless microphone operations under the Commission's part 74 LPAS rules. If the Commission were to permit WMAS, it seeks comment on any technical issues that would facilitate the Commission's approval of these new devices under its certification procedures. For instance, are the measurement procedures in EN 300 422 (2017) sufficient for these devices? Are there any other industry standards applicable to the testing of WMAS devices?

33. *Updating Technical Rules for Existing part 74 LPAS Wireless Microphones to Revised ETSI Standards.* The existing technical rules for part 74 LPAS wireless microphones incorporated certain ETSI standards that date to 2011. These ETSI standards currently apply to each of the bands in which the Commission is proposing to authorize WMAS—specifically, the VHF-TV bands (54–72 MHz, 76–88 MHz and 174–216 MHz), the UHF-TV band (470–608 MHz), the 653–657 MHz segment of the 600 MHz duplex gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands. As Shure notes, these ETSI standards recently have been updated.

34. *Discussion.* The Commission takes this opportunity to propose updating the existing part 74 LPAS device rules to require the use of an updated ETSI standard that applies to those type of devices (*i.e.*, non-WMAS wireless microphones). Specifically, the Commission proposes to update the existing part 74 wireless microphone rules to specify the transmit emission masks and spurious emission limits in EN 300 422–1 (2017) in place of the emission masks in the 2011 version of this standard which are currently specified in the rules. The Commission also proposes to slightly reorganize the rule sections specifying the emission masks and spurious emission limits to make them easier to follow, *i.e.*, separate paragraphs specifying the mask for analog systems, the masks for digital systems, and the spurious emission limits outside the masks.

*Incorporation by reference:* The proposed standard specifies minimum performance requirements and methods of measurement for assistive listening devices, wireless microphones and in-ear monitoring systems and applies to equipment operating on radio frequencies up to 3 GHz using analog, digital and hybrid (using both analog and digital) modulation. This document is available at no charge from Harmonised European Standard at [https://www.etsi.org/deliver/etsi\\_en/](https://www.etsi.org/deliver/etsi_en/)

[300400\\_300499/30042201/02.01.02\\_60/en\\_30042201v020102p.pdf](https://www.etsi.org/deliver/etsi_en/300400_300499/30042201/02.01.02_60/en_30042201v020102p.pdf) and is thus reasonably available to interested parties.

35. While the spurious emission limits in the 2011 and 2017 versions of the ETSI standard are the same and the newer emission masks are very similar to the older ones, there is one significant difference in the masks for digital wireless microphones. Specifically, the 2011 standard defines the emission mask for digital systems over a frequency range from one megahertz below to one megahertz above the wireless microphone carrier frequency, whereas the newer 2017 standard defines the emission mask over a frequency range from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where  $B$  is the wireless microphone bandwidth in megahertz. This difference means that digital wireless microphones that comply with the newer emission masks could potentially operate with a wider bandwidth than those that comply with the older mask defined in the 2011 standard. The Commission recognizes that section 5.1 of ETSI 300 422–1 (both 2011 and 2017) specifies a maximum wireless microphone bandwidth of 200 kilohertz at frequencies below 1 GHz and 600 kilohertz at frequencies above 1 GHz, but the part 74 rules do not specify a bandwidth limit outside of the TV bands and duplex gap, and they do not require compliance with the ETSI bandwidth limits.

36. The Commission seeks comment on the proposal to apply the ETSI 2017 standard for emission masks and spurious emissions to the types of wireless microphones currently permitted under part 74. Should the Commission update the rules to require using the transmit emission masks and spurious emission limits in ETSI EN 300 422–1 (2017)? What are the advantages or disadvantages of the modified frequency range of the masks for digital systems? Would it provide manufacturers any additional flexibility? Would it affect how efficiently users could use the spectrum? Is there any need to limit the digital system emission masks to a frequency range to  $\pm 1$  MHz from the carrier frequency as the current rules require? The Commission also seeks comment on any updates to the ETSI standard that are currently in progress. When is a new version expected to be available, and how does it differ from the 2017 version? Finally, for commenters who support updating the rules for microphones currently permitted under part 74 to the newer 2017 ETSI standard, the Commission seeks comment on whether to also adopt

an appropriate timeframe to transition to the newer requirements and discontinue certifying equipment under the 2011 standard's emission mask and spurious emissions requirements. The Commission is mindful that any new planned wireless microphone model roll-outs not be disrupted, but also seek to update the rules as expeditiously as possible to garner the benefits they would provide. What impact would imposing the updated emission masks and spurious emission limits from the 2017 standard have on the ability to certify existing equipment? Would equipment being developed to comply with the existing rules also comply with updated rules consistent with the 2017 standard? Or, if a transition period is needed, is 6 months or 1 year a reasonable timeframe to alter the equipment approval process and phase out the rules adopted consistent with the 2011 standard to not impede existing equipment developments?

37. *Revisions to the Technical Rules for part 15 Unlicensed Wireless Microphone Operations in the TV Bands, the 600 MHz Guard Band, and the 600 MHz Duplex Gap.* The Commission notes that Sennheiser and other wireless microphone manufacturers did not request that WMAS operations be permitted under the part 15 rules for unlicensed wireless microphone operations in the TV bands, the 600 MHz guard band, or the 600 MHz duplex gap. The Commission also notes that Microsoft expresses concerns about permitting WMAS in these bands. Given, however, that the Commission's rules permit wireless microphones to operate on an unlicensed basis under part 15 of the rules in the VHF-TV bands (54–72 MHz, 76–88 MHz and 174–216 MHz), the UHF-TV band (470–608 MHz), the 614–616 MHz segment of the 600 MHz guard band, and the 657–663 MHz segment of the 600 MHz duplex gap, that the rules currently provide that unlicensed wireless microphones in these bands must comply with emission masks and spurious emission limits defined in the 2011 version of the ETSI standard for wireless microphones, that wireless microphones in these bands often historically have used the same underlying technologies regardless of whether they operate on a licensed basis under part 74 or an unlicensed basis under part 15, and that oftentimes the same users may operate both licensed and unlicensed wireless microphones, the Commission seeks comment on the extent to which update the applicable rules for these devices to be consistent with the most recent ETSI standard as

it is proposing for licensed LPAS wireless microphones, and whether the Commission should otherwise permit use of WMAS for unlicensed wireless microphones in any of these bands.

38. *Background.* The Commission generally applies the same technical rules to unlicensed and licensed wireless microphones operations in the TV bands and the 600 MHz duplex gap, with certain differences relating to operation. In the TV bands, the technical requirements applicable to unlicensed wireless microphones are the same as those under part 74, while the maximum permissible power for unlicensed wireless microphones in the UHF-TV band is lower (*i.e.*, 50 milliwatts) than permitted for licensed LPAS wireless microphone operations (*i.e.*, 250 milliwatts) in that band. The rules for operation the 600 MHz duplex gap (652–663 MHz) differ between unlicensed wireless microphone and licensed part 74 LPAS wireless microphone operations in that licensed LPAS wireless microphones may operate in a 4-megahertz portion (653–657 MHz), while unlicensed wireless microphones may operate in a separate 6-megahertz portion (657–663 MHz), both limited to 20 milliwatts EIRP. Unlicensed wireless microphones share this 6-megahertz portion of the 600 MHz duplex gap with unlicensed white space devices, which operate under other part 15 rules. The emission mask and the spurious emission limits that apply to unlicensed wireless microphones in the TV bands and the 600 MHz guard band and duplex gap are the same as those that apply to licensed LPAS devices.

39. Microsoft asks that the Commission prohibit WMAS use by unlicensed wireless microphone operators in the TV bands and the 600 MHz duplex gap if such operations would be inconsistent with other existing part 15 technical rules. It notes that the current rules governing unlicensed wireless microphones allow such devices to operate with a higher spectral density than part 15 white space devices. Microsoft expresses concern that permitting 6-megahertz WMAS systems for unlicensed wireless microphones could “break this careful balance and allow co-channel operation with [w]hite [s]pace devices at significantly higher power levels than the FCC intended.” It asserts that the 6-megahertz channel in the 600 MHz duplex gap is especially critical for white space device operations because that is the only channel available for white space device operations throughout the entire United States.

40. *Discussion.* Consistent with its proposals to update the emission masks

and spurious emission limits in the existing part 74 LPAS rules for licensed wireless microphones (*i.e.*, wireless microphones that are limited to 200 kHz channels), the Commission similarly proposes to update the part 15 rules to specify the transmit emission masks and the spurious emission limits in EN 300 422–1 (2017) in place of the emission masks and spurious emission limits in the 2011 version of this standard which are currently specified in the rules. While the newer masks are very similar to the older ones, there is one significant difference in the masks for digital wireless microphones. Specifically, the older masks for digital systems were defined over a frequency range from one megahertz below to one megahertz above the wireless microphone carrier frequency, whereas the newer masks are defined over a frequency range from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz.

41. The Commission seeks comment on this proposal. Should the Commission update the rules to require the use of the transmit emission masks in ETSI EN 300 422–1 (2017)? What are the advantages or disadvantages of the modified frequency range of the masks for digital systems? Would it provide manufacturers any additional flexibility? Would it affect the efficiency of spectrum use? Is there any need to limit the digital system emission masks to a frequency range to  $\pm 1$  MHz from the carrier frequency as the current rules require? The Commission also seeks comment on any updates to the ETSI standard that are currently in progress. When is a new version expected to be available, and how does it differ from the 2017 version? How would updating the rules to harmonize with the ETSI standard create or hinder opportunities for wireless microphone manufacturers? What are the ramifications on the ability to easily manufacturer and sell these products on a global scale?

42. While the Commission notes that Sennheiser and other wireless microphone manufacturers did not request that WMAS operations be permitted for unlicensed wireless microphone operations in the TV bands, 600 MHz guard band, or the 600 MHz duplex gap, and that Microsoft opposed permitting WMAS in the unlicensed portion of the 600 MHz duplex gap, the Commission nonetheless seeks comment on whether WMAS should be permitted for unlicensed wireless microphone operations in any of these bands, and, if so, any technical rules or restrictions that should apply. The Commission recognizes that there are unlicensed entities that operate wireless

microphones in UHF bands that have a need to operate a large number of wireless microphones, but do not fall into any of the categories of entities eligible for a license under part 74 of the rules, and thus must operate wireless microphones on an unlicensed basis in the TV bands, the 600 MHz guard band, and the unlicensed portion of the 600 MHz duplex gap.

43. If the Commission were to allow WMAS under part 15 of the rules, in which bands should they be permitted to operate? Should they be allowed in only the TV bands, or also in the 600 MHz guard band, where unlicensed wireless microphones are permitted, and in the unlicensed upper 6-megahertz portion of the duplex gap (657–663 MHz)? Alternatively, should the Commission allow WMAS in the TV bands and the 600 MHz guard band, but not in the unlicensed portion of the 600 MHz duplex gap given the concerns raised by Microsoft? If the Commission were to allow such operation, what technical requirements should apply? Specifically, should they be permitted to operate with the current power limits of 50 milliwatts EIRP in the TV bands and 20 milliwatts EIRP in the 600 MHz guard band and 600 MHz duplex gap? Should the same bandwidth and spectral efficiency requirements apply as the Commission proposed for licensed WMAS? Would the ETSI emission masks and spurious emission limits that the Commission proposes for part 74 licensed WMAS devices be suitable for unlicensed WMAS devices?

44. The Commission does not intend to take any action in this proceeding that would constrain spectrum availability for or otherwise adversely impact the use of this spectrum for white space device operations. Accordingly, the Commission also seeks comment on the impact of permitting WMAS operations, both licensed and unlicensed, on part 15 white space devices which can operate in the VHF and UHF-TV bands and in the upper segment (657–663 MHz) of the 600 MHz duplex gap. White space devices must share spectrum with unlicensed wireless microphones on an equal basis but may not operate on channels at locations and at times that have been registered in the white space database for use by licensed wireless microphones. Would the rules the Commission is proposing for part 74 WMAS negatively impact white space devices in any way? Could the higher spectral efficiency of WMAS devices actually improve the availability of spectrum for white space devices since the same number of licensed wireless

microphones could potentially operate in fewer channels?

45. Finally, for commenters who support updating the rules for part 15 unlicensed wireless microphones to the newer 2017 ETSI standard, the Commission seeks comment on whether to also adopt an appropriate timeframe to transition to the newer requirements and discontinue certifying equipment under the 2011 standard's emission mask and spurious emissions requirements. What impact would imposing the updated emission masks and spurious emission limits from the 2017 standard have on the ability to certify existing equipment? Would equipment being developed to comply with the existing rules also comply with updated rules consistent with the 2017 standard? Or, if a transition period is needed, is 6 months or 1 year a reasonable timeframe to alter the equipment approval process and phase out the rules adopted consistent with the 2011 standard to not impede existing equipment developments?

46. Similarly, the Commission seeks comment on whether allowing part 15 unlicensed WMAS devices would have any negative impact on white space operations, or whether that could improve the availability of channels for white space devices due to the higher spectral efficiency of WMAS devices? In particular, the Commission seeks comment on whether allowing unlicensed WMAS devices to operate in the upper 6-megahertz segment of the 600 MHz duplex gap would be a problem for white space devices as Microsoft suggests? Under the current rules, unlicensed wireless microphones may operate in the duplex gap with a power level of up to 20 milliwatts EIRP. Because unlicensed wireless microphones have a bandwidth limit of 200 kilohertz, multiple unlicensed wireless microphones can operate in the duplex gap simultaneously, resulting in a total radiated power level of well over 20 milliwatts in the 6-megahertz band where they operate. Could WMAS permit the operation of multi-channel wireless microphones in the duplex gap at lower total power or power spectral density levels than the current rules permit, and thus reduce the likelihood of interference to white space devices? Are there other factors that could affect the coexistence of unlicensed wireless microphones and white space devices in the duplex gap or the TV bands?

47. *Updating Wireless Microphone Rules Following the End of the Post-Incentive Auction Transition.* Wireless microphones, both licensed and unlicensed, were previously permitted to operate in the 600 MHz band (former

TV channels 38–51) that was reallocated for wireless services in the *Incentive Auction R&O*. In that action, the Commission established a 39-month period during which TV stations would transition out of the 600 MHz band, and decided that wireless microphones would no longer be able to operate in the 600 MHz service band after this transition period, although they could still operate in the 600 MHz guard band(s) and 600 MHz duplex gap. In 2015 and 2017, the Commission established rules for both licensed and unlicensed wireless microphones that operate in the 600 MHz service band, certain segments of the 600 MHz guard band(s) and 600 MHz duplex gap, as well as transition requirements to implement the Commission's decision that all wireless microphones must cease operation in the 600 MHz service band at the end of the 39-month transition period. After the end of the transition period on July 13, 2020, wireless microphone operations in the 600 MHz band are limited to segments of the 600 MHz guard band and 600 MHz duplex gap as specified in the part 15 and 74 rules.

48. The Commission proposes to modify the part 74 and part 15 rules to reflect the end of the 39-month transition period. Some of these changes are not substantive and simply implement previous Commission decisions. Because the Commission is proposing to amend the part 74 and part 15 wireless microphone rules to allow WMAS and update references to ETSI standards, the Commission is including these additional changes in the proposed rules. The Commission seeks comment on whether these proposed changes are appropriate and whether there are any other rules not included in the proposed rules that also should be updated to reflect the end of the transition period.

49. *Part 74.* The Commission proposes to modify the list of frequencies in § 74.802(a) that are available for low power auxiliary stations by removing the 614–698 MHz band (former TV channels 38 to 51) and replacing it with the 653–657 MHz band (a segment of the 600 MHz duplex gap), which is the only portion of the 600 MHz band now available under part 74. The Commission also proposes to modify the technical requirements in § 74.861(e)(1) to remove the reference to the 614–698 MHz band in paragraph (ii) and to add the frequency band for the segment of the duplex gap where wireless microphones can operate in paragraph (iii). The Commission also notes that a number of part 74 rules specify deadlines related to the post-Incentive

Auction transition or other rule changes that have since passed. For example, §§ 74.802(f) and 74.851(i) through (l) contain provisions related to the now ended 600 MHz band transition. Section 74.870(c) lists 600 MHz band frequencies for Wireless Video Assist devices that are no longer available after the end of the transition, and §§ 74.861(d)(3), (e)(6) and 74.870(i) contain transition dates that have passed. The Commission seeks comment on its proposals to modify these rules as well as whether there are any other part 74 rules that can be removed or modified.

50. *Part 15.* The Commission proposes to make certain edits to the part 15 rules to remove unnecessary references to transition dates that have passed and to make the rules clearer and easier to follow. Specifically, with regard to § 15.236, the Commission proposes to amend paragraph (a) to remove the definition of 600 MHz service band since it is no longer available for wireless microphone use, as well as the definition of Spectrum Act, since it is not referenced anywhere else in this rule section. The Commission also proposes to remove paragraph (c)(2) which lists the 600 MHz service band as being available for unlicensed wireless microphones and paragraph (e)(2) which lists minimum required separation distances from 600 MHz service band licensees, as well as modify paragraph (d)(1) to remove a reference to the 600 MHz service band. The Commission further proposes to remove section 15.236(c)(6) which requires that prior to operation in 600 MHz service band, 600 MHz guard band(s) or 600 MHz duplex gap, wireless microphone users must rely on the white space database to determine that their intended operating frequencies are available for unlicensed wireless microphone operation at the location where they will be used, and to make corresponding revisions to the white space rules to reflect the removal of this section. This requirement appears unnecessary after the end of the post-incentive auction transition since with the removal of all TV stations from the 600 MHz band, there are no licensed services to protect in either the 600 MHz guard band or the upper 6-megahertz portion of the 600 MHz duplex gap. The Commission also proposes to remove § 15.37(i) (transition provisions for compliance with modified wireless microphone rules) since the certification, manufacturing, marketing and operational cutoff dates have all passed and there does not appear to be a need to retain this section. The

Commission further proposes to remove § 15.37(k) (disclosure requirements for unlicensed wireless microphones capable of operating in the 600 MHz service band) since all marketing of unlicensed wireless microphones that operate in the 600 MHz service band is now prohibited, so there does not appear to be a need for this rule on consumer disclosure.

51. The Commission seeks comment on these proposals. Does the Commission need to retain any of the rules that it proposes to eliminate? Is there a need for a rule specifically prohibiting unlicensed wireless microphone operation in the 600 MHz service band, or is it sufficient to simply remove all rules related to operation in this band, thus indirectly indicating that such operation is prohibited? With regard to the proposed removal of § 15.236(c)(6), the Commission notes that the Spectrum Act states that operation of unlicensed devices in the 600 MHz guard bands “shall rely on a database or subsequent methodology as determined by the Commission.” While the Commission is proposing to remove the database access requirement for unlicensed wireless microphones operating in the guard bands (including duplex gap) as no longer necessary, it believes the fact that these bands are now unavailable to licensed services nationwide constitutes a subsequent methodology that will ensure unlicensed wireless microphones do not cause harmful interference to licensed services, thus complying with the requirements of the Spectrum Act. The Commission seeks comment on this assessment.

#### Procedural Matters

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

53. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this document. The IRFA is found in Appendix C at <https://www.fcc.gov/document/fcc-looks-open-door-new->

*wireless-microphone-technologies-0.* The commission requests written public comment on the IRFA. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice of Proposed Rulemaking and must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

54. *Ex Parte Presentations.* This proceeding is a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

55. *Filing requirements.* Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788–89 (OS 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

56. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

57. *Additional Information.* For additional information on this proceeding, contact Hugh L. Van Tuyl, [Hugh.VanTuyl@fcc.gov](mailto:Hugh.VanTuyl@fcc.gov), (202) 418–7506.

**Ordering Clauses**

58. *It is ordered*, pursuant to the authority found in Sections 4(i), 301, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303, and §§ 1.407 and 1.411 of the Commission's Rules, 47 CFR 1.407 and 1.411, that this *Notice of Proposed Rulemaking is hereby adopted*. The petition for rulemaking of Sennheiser Electronic Corporation, RM-11821, is hereby *granted* to the extent discussed herein, and shall be consolidated into ET Docket No. 21-115.

59. *It is further ordered* that notice is hereby given of the proposed regulatory changes described in this *Notice of Proposed Rulemaking*, and that comment is sought on these proposals.

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

47 CFR Part 15

Communication equipment, Computer technology, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

**Proposed Rules**

The Federal Communications Commission proposes to amend 47 CFR parts 15 and 74 as follows:

**PART 15—RADIO FREQUENCY DEVICES**

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

**§ 15.37 [Amended]**

■ 2. Remove and reserve paragraphs (i) and (k).  
 ■ 3. Amend § 15.38 by revising paragraphs (a) and (e) to read as follows:

**§ 15.38 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418-0270, and is available from the sources listed elsewhere in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(e) The European Telecommunications Standards Institute (ETSI), 650 Route des Lucioles, F-06921 Sophia Antipolis Cedex, France, <https://www.etsi.org>.

(1) ETSI EN 300 422-1 V2.1.2 (2017-01): "Wireless Microphones; Audio PMSE up to 3 GHz; part 1: Class A Receivers; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU" Copyright 2017 ([https://www.etsi.org/deliver/etsi\\_en/300400\\_300499/30042201/02.01.02\\_60/en\\_30042201v020102p.pdf](https://www.etsi.org/deliver/etsi_en/300400_300499/30042201/02.01.02_60/en_30042201v020102p.pdf)) IBR approved for § 15.236(g).

(2) [Reserved]

■ 4. Amend § 15.236 by revising the section heading and paragraphs (a), (c), (d)(1), (e) and (g) to read as follows:

**§ 15.236 Operation of wireless microphones in the bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-608 MHz, 614-616 MHz and 657-663 MHz.**

(a) *Definitions.* The following definitions apply in this section.

(1) *Wireless Microphone.* An intentional radiator that converts sound into electrical audio signals that are transmitted using radio signals to a receiver which converts the radio signals back into audio signals that are sent through a sound recording or amplifying system. Wireless microphones may be used for cue and control communications and synchronization of TV camera signals as defined in § 74.801 of this chapter. Wireless microphones do not include auditory assistance devices as defined in § 15.3(a).

(2) *600 MHz duplex gap.* An 11 megahertz guard band at 652-663 MHz that separates part 27 600 MHz service uplink and downlink frequencies.

(3) *600 MHz guard band.* Designated frequency band at 614-617 MHz that prevents interference between licensed services in the 600 MHz service band and channel 37.

(c) Operation is permitted in the following frequency bands.

(1) Channels allocated and assigned for the broadcast television service.

(2) The 657-663 MHz segment of the 600 MHz duplex gap.

(3) The 614-616 MHz segment of the 600 MHz guard band.

(d) \* \* \*

(1) In the bands allocated and assigned for broadcast television: 50 mW EIRP.

(e) Operation is limited to locations at least four kilometers outside the following protected service contours of co-channel TV stations:

\* \* \* \* \*

(g)(1) *Analog systems.* Emissions within the band from one megahertz

below to one megahertz above the carrier frequency shall comply with the emission mask in section 8.3.2 of ETSI

EN 300 422-1 (incorporated by reference, see § 15.38).

Type of station	Protected contour		
	Channel	Contour (dBu)	Propagation curve
Analog: Class A TV, LPTV, translator and booster .....	Low VHF (2-6) .....	47	F(50,50).
	High VHF (7-13) .....	56	F(50,50).
	UHF (14-51) .....	64	F(50,50).
Digital: Full service TV, Class A TV, LPTV, translator and booster .....	Low VHF (2-6) .....	28	F(50,90).
	High VHF (7-13) .....	36	F(50,90).
	UHF (14-51) .....	41	F(50,90).

(2) *Digital systems.* Emissions within the band from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz, shall comply with the emission mask in section 8.3.3 of ETSI EN 300 422-1 (incorporated by reference, see § 15.38).

(3) *Spurious emission limits for analog and digital systems.* Emissions outside of the bands listed in paragraphs (g)(1) and (2) of this section shall comply with the limits specified in section 8.4 of ETSI EN 300 422-1 (incorporated by reference, see § 15.38).

■ 5. Amend § 15.703 by revising the definition of “White space database” to read as follows:

**§ 15.703 Definitions.**

\* \* \* \* \*

*White space database.* A database system approved by the Commission that maintains records on authorized services and provides lists of available channels to white space devices.

■ 6. Amend § 15.713 by removing and reserving paragraph (a)(2), revising paragraph (a)(3) and removing and reserving paragraphs (f) and (i) to read as follows:

**§ 15.703 White space database.**

(a) \* \* \*  
(2) [Reserved]  
(3) To register the identification information and location of fixed white space devices.

\* \* \* \* \*

(f) [Reserved]

\* \* \* \* \*

(i) [Reserved]

\* \* \* \* \*

**§ 15.715 [Amended]**

■ 7. Amend § 15.715 by removing paragraph (q).

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES**

■ 8. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 9. Amend § 74.801 by adding a definition for “Wireless Multi-Channel Audio System” to read as follows:

**§ 74.801 Definitions**

\* \* \* \* \*

*Wireless Multi-Channel Audio System.* A system that digitally combines the signals of multiple low power auxiliary station devices onto one radio-frequency channel.

■ 10. Amend § 74.802 by revising paragraph (a) to read as follows:

**§ 74.802 Frequency assignment.**

(a) Frequencies within the following bands may be assigned for use by low power auxiliary stations:

26.100–26.480 MHz  
54.000–72.000 MHz  
76.000–88.000 MHz  
161.625–161.775 MHz (except in Puerto Rico or the Virgin Islands)  
174.000–216.000 MHz  
450.000–451.000 MHz  
455.000–456.000 MHz  
470.000–488.000 MHz  
488.000–494.000 MHz (except Hawaii)  
494.000–608.000 MHz  
653.000–657.000 MHz  
941.500–944.000 MHz  
944.000–952.000 MHz  
952.850–956.250 MHz  
956.45–959.85 MHz  
1435–1525 MHz  
6875.000–6900.000 MHz  
7100.000–7125.000 MHz  
\* \* \* \* \*

■ 11. Amend § 74.861 by revising paragraphs (d)(4), (e)(1), (5) and (7), the introductory text to paragraph (i) and paragraph (i)(1) to read as follows:

**§ 74.861 Technical requirements.**

\* \* \* \* \*

(d) \* \* \*

(4)(i) *Analog systems.* For the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands, emissions within the band from one megahertz below to one megahertz above the carrier frequency shall comply with the emission mask in section 8.3.2 of ETSI EN 300 422-1.

(ii) *Digital systems.* For the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands, emissions within the band from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz, shall comply with the emission mask in section 8.3.3 (Figure 4 below 2 GHz or Figure 5 above 2 GHz) of ETSI EN 300 422-1.

(iii) *Wireless Multi-Channel Audio Systems.* For the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz, 6875–6900 MHz and 7100–7125 MHz bands, emissions within the band from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz, shall comply with the emission mask in section 8.3.4 of ETSI EN 300 422-1. The operating bandwidth (B) may not exceed 6 megahertz, and the device must transmit at least three audio channels per megahertz.

(iv) *Spurious emission limits.* Emissions outside of the emission masks specified in paragraphs (d)(4)(i) through (iii) shall comply with the limits specified in section 8.4 of ETSI EN 300 422-1.

(e) \* \* \*

(1) The power may not exceed the following values.

(i) 54–72, 76–88, and 174–216 MHz bands: 50 mW EIRP

(ii) 470–608 MHz band: 250 mW conducted power

(iii) 653–657 MHz band: 20 mW EIRP

\* \* \* \* \*

(5) The operating bandwidth shall not exceed 200 kilohertz, except that a wireless multi-channel audio system may have an operating bandwidth not exceeding 6 megahertz and must transmit at least three audio channels per megahertz. For wireless multi-channel audio system devices operating in the TV bands, the 6 megahertz (or less) channel must fall entirely within a single TV channel (2–36) that is available for part 74 LPAS use under § 74.802(b). The provisions of § 74.802(c) regarding frequency of operation within TV channels do not apply to wireless multi-channel audio systems.

\* \* \* \* \*

(7)(i) *Analog systems.* Emissions within the band from one megahertz below to one megahertz above the carrier frequency shall comply with the emission mask in section 8.3.2 of ETSI EN 300 422-1.

(ii) *Digital systems.* Emissions within the band from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz, shall comply with the emission mask in section 8.3.3 of ETSI EN 300 422-1.

(iii) *Wireless Multi-Channel Audio Systems.* Emissions within the band from  $5 \times B$  below to  $5 \times B$  above the carrier frequency, where B is the wireless microphone bandwidth in megahertz, shall comply with the emission mask in section 8.3.4 of ETSI EN 300 422-1 V2.1.2 (2017-01).

(iv) *Spurious emission limits.* Emissions outside of the bands listed in paragraphs (e)(7)(i) through (iii) shall comply with the limits specified in section 8.4 of ETSI EN 300 422-1.

\* \* \* \* \*

(i) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Communications Commission’s



Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418-0270, and is available from the sources in this paragraph (i) For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to go to [www.archives.gov/federal-register/cfr/ibrlocations.html](http://www.archives.gov/federal-register/cfr/ibrlocations.html).

(1) European Telecommunications Standards Institute (ETSI), 650 Route des Lucioles, F-06921 Sophia Antipolis Cedex, France, <https://www.etsi.org/>

(i) ETSI EN 300 422-1 V2.1.2 (2017-01): “*Wireless Microphones; Audio PMSE up to 3 GHz; part 1: Class A Receivers; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU*”

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(ii) [Reserved]

(2) [Reserved]

[FR Doc. 2021-10716 Filed 6-30-21; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 86, No. 124

Thursday, July 1, 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

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2021-0031]

#### National Wildlife Services Advisory Committee; Intent To Reestablish

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent to reestablish.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture (Secretary) intends to reestablish the National Wildlife Services Advisory Committee (the

Committee) for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Joyce, Designated Federal Officer, Wildlife Services, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737; *carrie.e.joyce@usda.gov*; (301) 851-3999.

**SUPPLEMENTARY INFORMATION:** The purpose of the National Wildlife Services Advisory Committee (the Committee) is to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

Date: June 25, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021-14032 Filed 6-30-21; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**SUPPLEMENTARY INFORMATION:**

### LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[6/5/2021 through 6/24/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Clearwater Engineering, Inc .....	301 North River Street, Derby, KS 67037.	6/8/2021	The firm manufactures aerospace parts and assemblies.
E.C. Phillips & Son, Inc .....	1775 Tongass Avenue, Ketchikan, AK 99901.	6/21/2021	The firm processes and packages seafood.
Max Aerostructures, LLC .....	8219 West Irving Street, Wichita, KS 67209.	6/22/2021	The firm manufactures aerospace parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public

hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Bryan Borlik,**

*Director.*

[FR Doc. 2021-14063 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-WH-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-139]

#### Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Hermes Pinilla at (202) 482-3477 and Andre Gziryan at (202) 482-2201; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On March 18, 2021, the Department of Commerce (Commerce) initiated the less-than-fair-value investigation of certain mobile access equipment and subassemblies thereof from the People's Republic of China.<sup>1</sup> Currently, the preliminary determination is due no later than August 5, 2021.

**Postponement of Preliminary Determination**

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days of the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On June 24, 2021, the Coalition of American Manufacturers of Mobile Access Equipment<sup>2</sup> (the petitioners) submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.<sup>3</sup> The petitioners stated that they request postponement due to concerns that Commerce will need more

time to issue supplemental questionnaires to address deficiencies in the respondents' initial questionnaire responses. Under the current timeline, the petitioners believe that Commerce will not have complete responses and sufficient information to prepare and issue the preliminary determination.<sup>4</sup>

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for this preliminary determination by 50 days (*i.e.*, 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determination no later than September 24, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination in this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

**Notification to Interested Parties**

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 25, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-14046 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-580-880]

**Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review did not make sales of subject merchandise at less than normal value during the period of review (POR), September 1, 2018, through August 31, 2019.

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Alice Maldonado or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4682 or (202) 482-3342, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

This review covers three producers and exporters of the subject merchandise. Commerce selected Dong-A Steel Co., Ltd., (DOSCO) and HiSteel Co., Ltd., (HiSteel) for individual examination. The producer and/or exporter not selected for individual examination, Kukje Steel Co., Ltd., (Kukje Steel) is listed in the "Final Results of the Review" section of this notice.

On January 26, 2021, Commerce published the *Preliminary Results*.<sup>1</sup> In March 2021, the petitioner,<sup>2</sup> DOSCO, and HiSteel submitted case and rebuttal briefs.<sup>3</sup> For a description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>4</sup> On May 14, 2021, we extended the deadline for the final results until June 25, 2021.<sup>5</sup>

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

<sup>1</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 7071 (January 26, 2021) (*Preliminary Results*).

<sup>2</sup> The petitioner is Nucor Tubular Products Inc.

<sup>3</sup> See Petitioner's Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Case Brief," dated March 19, 2021; DOSCO and HiSteel's Joint Case Brief, "Case Brief of Dong-A-Steel Co., Ltd and HiSteel Co. Ltd.," dated March 19, 2021; DOSCO's Case Brief, "Case Brief of DOSCO," dated March 19, 2021; DOSCO's Rebuttal Case Brief, "Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea—Rebuttal Brief of DOSCO," dated March 29, 2021; HiSteel's Rebuttal Case Brief, "Administrative Review of the Antidumping Order Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea—Rebuttal Brief of HiSteel Co. Ltd.," dated March 29, 2021; Petitioner's Rebuttal Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Brief," dated March 29, 2021. We also received a letter in lieu of a rebuttal brief from Kukje Steel. See Kukje Steel's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea—Letter in Support of Mandatory Respondents' Briefs," dated March 29, 2021.

<sup>4</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea," dated concurrently with, and hereby adopted by, these results (Issues and Decision Memorandum).

<sup>5</sup> See Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Final Results of the 2018-2019 Antidumping Duty Administrative Review," dated May 14, 2021.

<sup>1</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 86 FR 15922 (March 25, 2021).

<sup>2</sup> The members of the Coalition of American Manufacturers of Mobile Access Equipment are: JLG Industries, Inc. and Terex Corporation.

<sup>3</sup> See Petitioners' Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Request for Postponement of the Preliminary Determination," dated June 24, 2021.

<sup>4</sup> *Id.*

**Scope of the Order**

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from the Republic of Korea (Korea). Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.<sup>6</sup>

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>.

**Verification**

Commerce was unable to conduct on-site verification of the information relied upon for the final results of this review. However, we took additional steps in lieu of an on-site verification to verify this information, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).<sup>7</sup>

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we made certain changes to the preliminary weighted-average margin calculations for DOSCO and HiSteel. For a discussion of these changes, see the Margin Calculations section of the Issues and Decision Memorandum.<sup>8</sup>

<sup>6</sup> For a full description of the scope of the order, see Issues and Decision Memorandum.

<sup>7</sup> See Commerce’s Letters, In Lieu of Verification Questionnaires for HiSteel and DOSCO, dated February 16, 2021 and March 4, 2021, respectively; see also HiSteel’s Letter, “Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea—Response to the Department’s February 16 In-Lieu of Verification Questionnaire,” dated February 25, 2021; and DOSCO’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea—Response to the Department’s March 4 Questionnaire In-Lieu of Verification,” dated March 11, 2021.

<sup>8</sup> See Issues and Decision Memorandum.

**Rate for Non-Selected Respondents**

The Act and Commerce’s regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.” Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all other respondents. The SAA states that the “expected method” under “any reasonable method” is that we will weight-average the rates that are zero, de minimis, and based entirely on facts available.<sup>9</sup>

In this review, we have calculated weighted-average dumping margins for DOSCO and HiSteel that are zero percent, and we have assigned this zero percent to the non-selected company in this review (*i.e.*, Kukje Steel), pursuant to section 735(c)(5)(B) of the Act.

**Final Results of the Review**

We continue to assign the following weighted-average dumping margins to the firms listed below for the period September 1, 2018, through August 31, 2019:

Producers/exporters	Weighted-average dumping margin (percent)
Dong-A Steel Co., Ltd <sup>10</sup> .....	0.00
HiSteel Co., Ltd .....	0.00

<sup>9</sup> See Uruguay Round Agreements Act Statement of Administrative Action attached to H.R. Rep. No. 103–316 vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA).

<sup>10</sup> As discussed in the *Preliminary Results*, Commerce preliminarily determined to collapse Dong-A Steel Co., Ltd., with its affiliated producer SeAH Steel Corporation and treat these companies as a single entity, in accordance with 19 CFR 351.401(f). We received no comments on this issue and continue to determine that Dong-A Steel Co., Ltd. and SeAH Steel Corporation are a single entity.

Producers/exporters	Weighted-average dumping margin (percent)
Kukje Steel Co., Ltd .....	0.00

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where 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 rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In accordance with Commerce’s practice, for entries of subject merchandise during the POR for which the reviewed companies did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no company-specific rate for the intermediate company(ies) involved in the transaction.<sup>11</sup>

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.<sup>12</sup> 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).

<sup>11</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>12</sup> See section 751(a)(2)(C) of the Act.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.24 percent, the all-others rate established in the LTFV investigation.<sup>13</sup> These 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 prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification Regarding Administrative Protective Order

This notice serves as the only reminder to 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), which continues to govern business proprietary information in this segment

<sup>13</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865, 62866 (September 13, 2016).

of the proceeding. Timely written notification of return/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) of the Act.

Dated: June 25, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Margin Calculations
- V. Discussion of Issues
  - General Issues
    - Comment 1: Existence of a Particular Market Situation (PMS)
    - Comment 2: PMS Adjustment
    - Comment 3: Differential Pricing
  - DOSCO-Specific Issues
    - Comment 4: DOSCO's Scrap Offset
    - Comment 5: SeAH Steel Corporation (SeAH Steel)'s Scrap Offset
    - Comment 6: Common Expenses—DOSCO's General and Administrative (G&A) Expense Ratio
    - Comment 7: Affiliated Services—DOSCO's and SeAH Steel's G&A Expense Ratios
    - Comment 8: Inventory Valuation Losses—DOSCO's G&A Expense Ratio
    - Comment 9: Unassigned Material Costs Variance—SeAH Steel's G&A Expense Ratio
    - Comment 10: Packing Costs—DOSCO's G&A Expense Ratio
    - Comment 11: Collapsed G&A Expense Ratio
    - Comment 12: Short Term Interest Income—Financial Expense Ratio
    - Comment 13: Investment Related Gains and Losses—Financial Expense Ratio
    - Comment 14: Packing Costs—Financial Expense Ratio
  - HiSteel-Specific Issues
    - Comment 15: HiSteel Transactions—Disregarded Rule
    - Comment 16: Allocation of Common Expenses for HiSteel
    - Comment 17: HiSteel's Miscellaneous Income Items

#### VI. Recommendation

[FR Doc. 2021-14109 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-808, A-823-808]

### Continuation of Suspended Antidumping Duty Investigations on Certain Cut-to-Length Carbon Steel Plate From the Russian Federation and Ukraine

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the respective determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that the termination of the suspension agreements and the underlying antidumping duty investigations on certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation (Russia) and Ukraine (collectively, Suspension Agreements), would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the Suspension Agreements on CTL plate from Russia and Ukraine.

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or Rebecca Lee, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-0162 or (202) 482-6188, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

Commerce initiated, and the ITC instituted, sunset reviews of the suspended antidumping duty investigations of certain CTL plate from Russia and Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> Pursuant to sections 751(c) and 752 of the Act, Commerce determined that termination of the Suspension Agreements on CTL plate from Russia and Ukraine would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail, should the Suspension Agreements be terminated.<sup>2</sup>

<sup>1</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020); and *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine: Institution of Five-Year Reviews*, 85 FR 69362 (November 2, 2020).

<sup>2</sup> See *Certain Cut-to-Length Carbon Steel Plate from the Russian Federation and Ukraine: Final Results of the Expedited Fourth Sunset Reviews of*

On June 25, 2021, pursuant to section 751(c) of the Act, the ITC determined that termination of the Suspension Agreements on CTL plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup>

Therefore, pursuant to section 351.218(f)(4) of Commerce’s regulations, Commerce is publishing this notice of the continuation of the Suspension Agreements on CTL plate from Russia and Ukraine.

**Scope**

The products covered by these Suspension Agreements include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Suspension Agreements are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) for example, products

which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the Suspension Agreements is dispositive. Specifically excluded from the subject merchandise within the scope of these Suspension Agreements is grade X–70 plate.

**Continuation**

As a result of the respective determinations by Commerce and the ITC that termination of the Suspension Agreements on CTL plate from Russia and Ukraine would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby gives notice of the continuation of the Suspension Agreements on CTL plate from Russia and Ukraine. The effective dates of continuation will be the date of publication in the **Federal Register** of this Continuation Notice. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the Suspension Agreements not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published

pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 25, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations.*

[FR Doc. 2021–14061 Filed 6–30–21; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**Background**

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under sections 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for August 2021**

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in August 2021 and will appear in that month’s *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
<b>Antidumping Duty Proceedings</b>	
Narrow Woven Ribbons With Woven Selvedge from China, A–570–952 (2nd Review) .....	Thomas Martin, (202) 482–3936.
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico, A–201–847 (1st Review).	Mary Kolberg, (202) 482–1785.
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from South Korea, A–580–880 (1st Review).	Mary Kolberg, (202) 482–1785.
Narrow Woven Ribbons With Woven Selvedge from Taiwan, A–583–844 (2nd Review) .....	Thomas Martin, (202) 482–3936.
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey, A–489–824 (1st Review).	Mary Kolberg, (202) 482–1785.
<b>Countervailing Duty Proceedings</b>	
Narrow Woven Ribbons With Woven Selvedge from China, C–570–953 (2nd Review) .....	Mary Kolberg, (202) 482–1785.
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey, C–489–825 (1st Review).	Mary Kolberg, (202) 482–1785.
<b>Suspended Investigations</b>	
No Sunset Review of suspended investigations is scheduled for initiation in August 2021.	

*the Suspension Agreements*, 86 FR 13297 (March 8, 2021).

<sup>3</sup> See *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine*, 86 FR 33738 (June 25, 2021).

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>1</sup>

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 15, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-14113 Filed 6-30-21; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-849]

#### **Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Continuation of Antidumping Duty Order**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the respective determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on certain cut-to-length carbon steel plate from the People's Republic of China (China) would likely lead to continuation or recurrence of

dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Abdul Alnoor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4554.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 21, 2003, Commerce published in the **Federal Register** the AD order on certain cut-to-length carbon steel plate from China.<sup>1</sup> On November 1 and 2, 2020, Commerce initiated,<sup>2</sup> and the ITC instituted,<sup>3</sup> the fourth sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce therefore notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.<sup>4</sup> On June 25, 2021, the ITC published its determination that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.<sup>5</sup>

##### **Scope of the Order**

The product covered by the *Order* is certain cut-to-length carbon steel plate from China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters (mm) but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without

<sup>1</sup> See *Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003) (*Order*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020).

<sup>3</sup> See *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine; Institution of Five-Year Reviews*; 85 FR 69362 (November 2, 2020).

<sup>4</sup> See *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order*, 86 FR 13330 (March 8, 2021), and accompanying Issues and Decision Memorandum.

<sup>5</sup> See *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine*, 86 FR 33738 (June 25, 2021).

patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this *Order* are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive. Specifically excluded from the subject merchandise within the scope of the *Order* is grade X-70 steel plate.

##### **Continuation of the Order**

As a result of the respective determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).



**Administrative Protective Order (APO)**

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

**Notification to Interested Parties**

This five-year sunset review and notice are in accordance with section 751(c) of the Act and the notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 25, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-14054 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration****Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act: In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for

purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

**Deadline for Particular Market Situation Allegation**

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.<sup>1</sup> Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section

<sup>1</sup> See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity to Request a Review:* Not later than the last day of July 2021,<sup>2</sup> interested parties may request administrative review of the following

orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

<b>Antidumping Duty Proceedings</b>	
BELGIUM: Citric Acid and Certain Citrate Salts, A-423-813 .....	7/1/20-6/30/21
COLOMBIA: Citric Acid and Certain Citrate Salts, A-301-803 .....	7/1/20-6/30/21
INDIA:	
Corrosion-Resistant Steel Products, A-533-863 .....	7/1/20-6/30/21
Fine Denier Polyester Staple Fiber, A-533-875 .....	7/1/20-6/30/21
Polyethylene Terephthalate (Pet) Film, A-533-824 .....	7/1/20-6/30/21
IRAN: In-Shell Pistachios, A-507-502 .....	7/1/20-6/30/21
ITALY:	
Certain Pasta, A-475-818 .....	7/1/20-6/30/21
Corrosion-Resistant Steel Products, A-475-832 .....	7/1/20-6/30/21
JAPAN:	
Clad Steel Plate, A-588-838 .....	7/1/20-6/30/21
Cold-Rolled Steel Flat Products, A-588-873 .....	7/1/20-6/30/21
Polyvinyl Alcohol, A-588-861 .....	7/1/20-6/30/21
Stainless Steel Sheet and Strip in Coils, A-588-845 .....	7/1/20-6/30/21
Steel Concrete Reinforcing Bar, A-588-876 .....	7/1/20-6/30/21
MALAYSIA:	
Steel Nails, A-557-816 .....	7/1/20-6/30/21
Welded Stainless Steel Pressure Pipe, A-557-815 .....	7/1/20-6/30/21
OMAN: Steel Nails, A-523-808 .....	7/1/20-6/30/21
REPUBLIC OF KOREA:	
Corrosion-Resistant Steel Products, A-580-878 .....	7/1/20-6/30/21
Fine Denier Polyester Staple Fiber, A-580-893 .....	7/1/20-6/30/21
Stainless Steel Sheet and Strip in Coils, A-580-834 .....	7/1/20-6/30/21
Steel Nails, A-580-874 .....	7/1/20-6/30/21
SOCIALIST REPUBLIC OF VIETNAM:	
Steel Nails, A-552-818 .....	7/1/20-6/30/21
Welded Stainless Pressure Pipe, A-552-816 .....	7/1/20-6/30/21
TAIWAN:	
Corrosion-Resistant Steel Products, A-583-856 .....	7/1/20-6/30/21
Fine Denier Polyester Staple Fiber, A-583-860 .....	7/1/20-6/30/21
Polyethylene Terephthalate (Pet) Film, A-583-837 .....	7/1/20-6/30/21
Stainless Steel Sheet and Strip in Coils, A-583-831 .....	7/1/20-6/30/21
Steel Nails, A-583-854 .....	7/1/20-6/30/21
THAILAND:	
Carbon Steel Butt-Weld Pipe Fittings, A-549-807 .....	7/1/20-6/30/21
Citric Acid and Certain Citrate Salts, A-549-833 .....	7/1/20-6/30/21
Weld Stainless Steel Pressure Pipe, A-549-830 .....	7/1/20-6/30/21
THE PEOPLE'S REPUBLIC OF CHINA:	
Carbon Steel Butt-Weld Pipe Fittings, A-570-814 .....	7/1/20-6/30/21
Certain Sodium Potassium Phosphate Salts, A-570-962 .....	7/1/20-6/30/21
Certain Steel Grating, A-570-947 .....	7/1/20-6/30/21
Circular Welded Carbon Quality Steel Pipe, A-570-910 .....	7/1/20-6/30/21
Cold-Rolled Steel Flat Products, A-570-029 .....	7/1/20-6/30/21
Collated Steel Staples, A-570-112 .....	1/8/20-6/30/21
Corrosion-Resistant Steel Products, A-570-026 .....	7/1/20-6/30/21
Fine Denier Polyester Staple Fiber, A-570-060 .....	7/1/20-6/30/21
Persulfates, A-570-847 .....	7/1/20-6/30/21
Quartz Surface Products, A-570-084 .....	7/1/20-6/30/21
Xanthan Gum, A-570-985 .....	7/1/20-6/30/21
TURKEY:	
Certain Pasta, A-489-805 .....	7/1/20-6/30/21
Steel Concrete Reinforcing Bar, A-489-829 .....	7/1/20-6/30/21
UKRAINE: Oil Country Tubular Goods, A-823-815 .....	7/1/20-6/30/21
<b>Countervailing Duty Proceedings</b>	
INDIA:	
Corrosion-Resistant Steel Products, C-533-864 .....	1/1/20-12/31/20
Polyethylene Terephthalate (Pet) Film, C-533-825 .....	1/1/20-12/31/20
ITALY:	
Certain Pasta, C-475-819 .....	1/1/20-12/31/20
Corrosion-Resistant Steel Products, C-475-833 .....	1/1/20-12/31/20
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, C-580-879 .....	1/1/20-12/31/20
SOCIALIST OF REPUBLIC OF VIETNAM: Steel Nails, C-552-819 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Sodium and Potassium Phosphate Salts, C-570-963 .....	1/1/20-12/31/20

<sup>2</sup> Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

Circular Welded Carbon Quality Steel Pipe, C-570-911 .....	1/1/20-12/31/20
Cold-Rolled Steel Flat Products, C-570-030 .....	1/1/20-12/31/20
Collated Steel Staples, C-570-113 .....	11/12/19-12/31/20
Corrosion-Resistant Steel Products, C-570-027 .....	1/1/20-12/31/20
Prestressed Concrete Steel Wire Strand, C-570-946 .....	1/1/20-12/31/20
Quartz Surface Products, C-570-085 .....	1/1/20-12/31/20
Steel Grating, C-570-948 .....	1/1/20-12/31/20
TURKEY:	
Certain Pasta, C-489-806 .....	1/1/20-12/31/20
Steel Concrete Reinforcing Bar, C-489-830 .....	1/1/20-12/31/20

### Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the

collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.<sup>3</sup>

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.<sup>4</sup> Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.<sup>5</sup> In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and

Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.<sup>6</sup> Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>7</sup>

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 2021. If Commerce does not receive, by the last day of July 2021, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

<sup>3</sup> See the Enforcement and Compliance website at <https://legacy.trade.gov/enforcement/>.

<sup>4</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>5</sup> In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

<sup>6</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>7</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

Dated: June 28, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-14112 Filed 6-30-21; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-469-817]

**Ripe Olives From Spain: Final Results of Antidumping Duty Administrative Review; 2018-2019**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that the producers/exporters subject to this review made sales of subject merchandise in the United States at less than normal value during the period of review (POR) January 26, 2018, through July 31, 2019.

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0665.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 28, 2020, Commerce published the *Preliminary Results* of the 2018-2019 administrative review of the antidumping duty order on ripe olives from Spain.<sup>1</sup> The administrative review covers three producers or exporters of the subject merchandise, Agro Sevilla Aceitunas S. Coop. And. (Agro Sevilla), Camacho Alimentacion S.L. (Angel Camacho), and Alimentary Group Dcoop S. Coop. And. (Dcoop). We invited interested parties to comment on the *Preliminary Results*. On February 1, 2021, we received case briefs from the domestic interested parties, Musco Family Olive Company (Musco) and Bell-Carter Foods, LLC (BCF), both members of the Coalition for Fair Trade in Ripe Olives, and from the mandatory respondents, Agro Sevilla, Angel Camacho, and Dcoop.<sup>2</sup> On February 8,

2021, Musco, Agro Sevilla, Angel Camacho, and Dcoop submitted rebuttal briefs.<sup>3</sup> On April 5, 2021, Commerce extended the deadline for the final results by 59 days to June 25, 2021.<sup>4</sup> Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

The merchandise subject to the order are ripe olives. A full description of the scope of the order is contained in the Issues and Decision Memorandum.<sup>5</sup>

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete

Concerning Agro Sevilla," dated February 1, 2021; "Ripe Olives from Spain; 1st Administrative Review Musco Case Brief Concerning Camacho," dated February 1, 2021; and "Ripe Olives from Spain; 1st Administrative Review Musco Case Brief Concerning Dcoop," dated February 1, 2021; *see also* BCF's Letter, "Ripe Olives from Spain: Case Brief," dated February 1, 2021; Agro Sevilla's Letter, "Case Brief of Agro Sevilla Ripe Olives from Spain (A-469-817) POR1," dated February 1, 2021; Angel Camacho's Letter, "Case Brief of Camacho Alimentación S.L. Ripe Olives from Spain (A-469-817) POR1," dated February 1, 2021; and Dcoop's Letter, "Ripe Olives from Spain: Case Brief," dated February 1, 2021.

<sup>3</sup> *See* Musco's Letters, "Ripe Olives from Spain; 1st Administrative Review Musco Rebuttal Brief Concerning Agro Sevilla," dated February 8, 2021; "Ripe Olives from Spain; 1st Administrative Review Musco Rebuttal Brief Concerning Camacho," dated February 8, 2021; "Ripe Olives from Spain; 1st Administrative Review Musco Rebuttal Brief Concerning Dcoop," dated February 8, 2021; and "Ripe Olives from Spain; 1st Administrative Review Musco Rebuttal Brief Concerning BCF," dated February 8, 2021; *see also* Agro Sevilla's Letter, "Rebuttal Brief of Agro Sevilla Ripe Olives from Spain (A-469-817) POR1," dated February 8, 2021; Angel Camacho's Letter, "Rebuttal Brief of Camacho Alimentación S.L. Ripe Olives from Spain (A-469-817) POR1," dated February 8, 2021; and Dcoop's Letter, "Ripe Olives from Spain: Rebuttal Brief," dated February 8, 2021.

<sup>4</sup> *See* Memorandum, "Ripe Olives from Spain: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated April 5, 2021.

<sup>5</sup> *See* Memorandum, "Ripe Olives from Spain: 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).

version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn>.

**Changes Since the Preliminary Results**

Based on the comments received we made changes for these final results which are discussed in the Issues and Decision Memorandum.

**Final Results of the Administrative Review**

We determine that the following weighted-average dumping margins exist for the period January 26, 2018, through July 31, 2019.

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas S.COOP Andalusia .....	15.65
Angel Camacho Alimentacion S.L .....	22.41
Alimentary Group Dcoop S. Coop. And .....	5.78

**Disclosure**

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days after the date of publication of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Agro Sevilla, Angel Camacho, and Dcoop, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).<sup>6</sup> Where an importer-specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent), the entries by that importer will be liquidated

<sup>6</sup> In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

<sup>1</sup> *See Ripe Olives from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 84297 (December 28, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> *See* Musco's Letters, "Ripe Olives from Spain; 1st Administrative Review Musco Case Brief

without reference to antidumping duties.

For entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>7</sup>

Consistent with its recent notice,<sup>8</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of ripe olives entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for the companies subject to this review will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent, the all-others rate established in the less-than-fair-value investigation for this proceeding.<sup>9</sup> 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 prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Orders

This notice also serves as a 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 terms of an APO is a violation subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: June 25, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the Preliminary Results
- V. Discussion of the Issues
  - Agro Sevilla*
    - Comment 1: Home-Market Database
    - Comment 2: Constructed Export Price Offset
    - Comment 3: Major-Input Rule Adjustment
  - Angel Camacho*
    - Comment 4: Price Comparisons for a Certain Product Control Number Sold in the U.S. Market
    - Comment 5: Cost Adjustment to Ending Inventory Value
    - Comment 6: General and Administrative Expenses
    - Comment 7: Certain Inland Freight Expenses

- Comment 8: Beginning Dates in Programs *Dcoop*
  - Comment 9: Whether Commerce Should Apply Adverse Facts Available to *Dcoop's* Cost Database
  - Comment 10: Application of Adverse Facts Available to *Dcoop's* General and Administrative Expenses
  - Comment 11: Early Payment and Quantity Discounts
  - Comment 12: U.S. Freight and U.S. Indirect Selling Expenses
  - Comment 13: Rescission of the Administrative Review of *Dcoop*
  - VI. Recommendation
- [FR Doc. 2021-14060 Filed 6-30-21; 8:45 am]  
BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-880]

#### Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Notice of Court Decision Not in Harmony With the Final Results in the Antidumping Duty Administrative Review; Notice of Amended Final Results

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 24, 2021, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (Commerce's) remand results pertaining to the first administrative review of the antidumping duty order on heavy walled rectangular welded carbon steel pipes and tubes (HWR) from the Republic of Korea (Korea) covering the period of review (POR) of March 1, 2016, through August 31, 2017. Commerce is notifying the public that the CIT's final judgment in this case is not in harmony with Commerce's final results in the first administrative review of HWR from Korea. Consistent with the CIT's final judgment, Commerce is amending the weighted-average dumping margins calculated for Dong A-Steel Company (DOSCO) and Kukje Steel Co., Ltd. (Kukje Steel).

**DATES:** Applicable July 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Alice Maldonado, AD/CVD Operations Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4682.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 28, 2019, Commerce published its *Final Results* in the first

<sup>7</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>8</sup> See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 884 (Jan.15, 2021).

<sup>9</sup> See *Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018).

administrative review of HWR from Korea.<sup>1</sup> As reflected in the *Final Results*, Commerce calculated a weighted-average dumping margin of 20.79 percent for DOSCO and 12.81 percent Kukje Steel, one of the companies receiving the review-specific average rate.<sup>2</sup>

DOSCO and Kukje Steel appealed Commerce's *Final Results* to the CIT. On September 29, 2020, the CIT remanded for Commerce to explain or reconsider its finding of a particular market situation (PMS) in the Korean market for the hot-rolled coil input and its application of a PMS adjustment to the respondents' cost of production (COP).<sup>3</sup> On December 22, 2020, Commerce issued the First Remand Results, in which, under protest, it determined that there is no PMS that distorts the COP of HWR and recalculated the weighted-average dumping margin for DOSCO without the PMS adjustment to the COP for the sales-below-cost test.<sup>4</sup> As a result, Commerce calculated a revised weighted-average dumping margin for DOSCO of 11.00 percent. Moreover, as a result of Commerce's recalculation of the weighted-average dumping margin for DOSCO, Commerce revised the review-specific average rate applied to Kukje Steel to 7.89 percent.

On June 24, 2021, the CIT sustained Commerce's Final Remand Results.<sup>5</sup>

### Timken Notice

In its decision in *Timken*,<sup>6</sup> as clarified by *Diamond Sawblades*,<sup>7</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision.<sup>8</sup> The CIT's June 24, 2021 judgment in this case

<sup>1</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 84 FR 24471 (May 28, 2019) (*Final Results*).

<sup>2</sup> *Id.* at 24472.

<sup>3</sup> See *Dong-A Steel Company v. United States*, 475 F. Supp. 3d 1317 (CIT 2020) (*Remand Order*).

<sup>4</sup> See *Final Results of Redetermination Pursuant to Court Remand*, Consol. Court No. 19–00104, dated December 21, 2020 (*Final Remand Results*) at 1.

<sup>5</sup> See *Dong-A Steel Company v. United States*, Slip Op. 21–79, Consol. Court No. 19–00104 (CIT 2021) (*DOSCO*).

<sup>6</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>7</sup> See *Diamond Sawblades Mfrs. Coal. v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>8</sup> See sections 516A(c) and (e) of the Act.

constitutes a final decision of that court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

### Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results* with respect to the weighted-average dumping margins for DOSCO and Kukje Steel.<sup>9</sup> The revised weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Dong A-Steel Company .....	11.00
Kukje Steel Co., Ltd .....	7.89

### Cash Deposit Requirements

Because DOSCO and Kukje Steel have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

### Liquidation of Suspended Entries

During the pendency of litigation, including any appeal, Commerce remains enjoined by Court order from liquidating entries: (1) Produced and/or exported by Dong-A Steel Company or Kukje Steel Co., Ltd.; (2) the subject of the *Final Results*; (3) entered, or were withdrawn from warehouse, for consumption on or after March 1, 2016, up to and including August 27, 2016, and on or after September 12, 2016, up to and including August 31, 2017; and (4) remain unliquidated as of the date the Court issued the applicable statutory injunction. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT's final judgment is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce

<sup>9</sup> See section 735(c)(5)(A) of the Act; *see also* *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017*, 83 FR 50892 (October 10, 2018), and accompanying Preliminary Decision Memorandum at 4 (explaining the method for determining the rate applied to companies not selected for individual examination), method unchanged in the *Final Results*; and Memorandum, "Calculation of the Review-Specific Average Rate for the Final Results of Redetermination," dated December 21, 2020.

will instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by DOSCO and Kukje Steel, in accordance with 19 CFR 351.212(b) and the Final Remand Results. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>10</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by DOSCO or Kukje Steel for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>11</sup>

### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 25, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–14048 Filed 6–30–21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

<sup>10</sup> See 19 CFR 351.106(c)(2).

<sup>11</sup> For a full discussion of this practice, *see* *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

**DATES:** Applicable July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation*

*of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-351-602 .....	731-TA-308 .....	Brazil .....	Carbon Steel Butt-Weld Pipe Fittings (5th Review)	Mary Kolberg, (202) 482-1785.
A-570-814 .....	731-TA-502 .....	China .....	Carbon Steel Butt-Weld Pipe Fittings (5th Review)	Mary Kolberg, (202) 482-1785.
A-570-028 .....	731-TA-1279 .....	China .....	Hydrofluorocarbon Blends and Components Thereof (1st Review).	Mary Kolberg, (202) 482-1785.
A-570-506 .....	731-TA-298 .....	China .....	Porcelain-on-Steel Cooking Ware (5th Review) .....	Thomas Martin, (202) 482-3936.
A-588-602 .....	731-TA-309 .....	Japan .....	Carbon Steel Butt-Weld Pipe Fittings (5th Review)	Mary Kolberg, (202) 482-1785.
A-588-843 .....	731-TA-771 .....	Japan .....	Stainless Steel Wire Rod (4th Review) .....	Mary Kolberg, (202) 482-1785.
A-580-829 .....	731-TA-772 .....	South Korea .....	Stainless Steel Wire Rod (4th Review) .....	Mary Kolberg, (202) 482-1785.
A-583-605 .....	731-TA-310 .....	Taiwan .....	Carbon Steel Butt-Weld Pipe Fittings (5th Review)	Mary Kolberg, (202) 482-1785.
A-583-828 .....	731-TA-775 .....	Taiwan .....	Stainless Steel Wire Rod (4th Review) .....	Mary Kolberg, (202) 482-1785.
A-549-807 .....	731-TA-521 .....	Thailand .....	Carbon Steel Butt-Weld Pipe Fittings (5th Review)	Mary Kolberg, (202) 482-1785.

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these

proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>1</sup>

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later

than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.<sup>2</sup>

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

<sup>2</sup> See 19 CFR 351.218(d)(1)(iii).



countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 16, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-14111 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Draft Revised Management Plan for the Mission-Aransas National Estuarine Research Reserve

**AGENCY:** Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

**ACTION:** Request for comments on draft revised management plan.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is soliciting comments from the public regarding a proposed revision of the management plan for the Mission-Aransas National Estuarine Research Reserve. The management plan provides a framework for the direction and timing of a reserve's programs; allows reserve managers to assess a reserve's success in meeting its goals and to identify any necessary changes in direction; and is used to guide programmatic evaluations of the reserve. Plan revisions are required of each reserve in the National Estuarine Research Reserve System at least every five years. This revised plan is intended to replace the plan approved in 2015.

**DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Comments may be submitted by:

- *Electronic Submission:* Submit all electronic public comments by email to [matt.chasse@noaa.gov](mailto:matt.chasse@noaa.gov) and [jace.tunnell@austin.utexas.edu](mailto:jace.tunnell@austin.utexas.edu). Include "Comments on draft Mission-Aransas Management Plan" in the subject line of the message.

*Instructions:* The draft revised management plan can be downloaded or viewed at: <http://missionaransas.org/about/management-plan>. The document is also available by sending a written request to the point of contact identified below under **FOR FURTHER INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Matt Chasse, NOAA Office for Coastal

Management, [matt.chasse@noaa.gov](mailto:matt.chasse@noaa.gov), or 410-570-1020.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to 15 CFR 921.33(c), a state must revise the management plan for the research reserve at least every five years. If approved by NOAA, the Mission-Aransas Reserve's revised plan will replace the plan previously approved in 2015.

The draft revised management plan outlines strategic goals and objectives and the administrative structure, as well as programs or plans for conducting research and environmental monitoring, education, and training; volunteer management, communications, and resource protection; public access and visitor use; restoration and resource manipulation; and considerations for future land acquisition and facility development to support reserve operations.

In particular, this draft plan describes how reserve programs will address specific goals. These goals include the advancement and dissemination of scientific knowledge about Texas coastal ecosystems; increasing the understanding, appreciation, and stewardship of coastal ecosystems; the conservation, protection, and restoration of Texas coastal habitats and wildlife; establishing and nurturing partnerships to promote and advance coastal research, management, and community resiliency and literacy; recognition of staff and volunteer contributions; and maintaining strong facilities that build capacity and enrich programs.

The revised management plan builds upon past successes and accomplishments and is designed to address specific priority coastal management issues. The priority issues for research and monitoring include marine debris, industrial growth impacts, eDNA, freshwater inflow, biological monitoring, and sea level rise and coastal subsidence. For education and training, priorities to be addressed include connecting children and nature; outdoor education programming, climate change and its effects on coastal environments; coastal ecology and habitat diversity; marine debris and its impacts on the coastal environment; and stewardship of estuarine and coastal resources. These issues align with the 2017-2022 National Estuarine Research Reserve System's strategic plan.

Since its inception, this reserve has engaged in strategic partnerships with its land managing partners and others based on mutual interests. These partnerships are expected to be maintained or expanded through the

revised management plan including reserve administration of the Amos Rehabilitation Keep (ARK), providing animal rehabilitation services for species endemic to the estuary. The reserve is also planning to maintain and improve reserve facilities including Fennessey Ranch, the Bay Education Center, the ARK, and the Patton Marine Science Education Center. Additionally, no boundaries changes are incorporated into the revised management plan. The revised management plan, once approved, would serve as the guiding document for the 186,189-acre research reserve for the next five years.

NOAA's Office for Coastal Management analyzes the environmental impacts of the proposed approval of this draft revised management plan in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(2)(C), and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). The public is invited to comment on the draft revised management plan. NOAA will take these comments into consideration in deciding whether to approve the draft revised management plan in whole or in part.

**Authority:** 16 U.S.C. 1451 *et seq.*; 15 CFR 921.33.

**Keelin S. Kuipers,**

*Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2021-14042 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB204]

#### Marine Mammals; File No. 25761

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Earthscape Productions, Ltd., St Stephens Avenue, Bristol, BS1 1YL, United Kingdom, (Responsible Party: Tina Razdan), has applied in due form for a permit to conduct commercial or educational photography on pinnipeds.

**DATES:** Written, telefaxed, or email comments must be received on or before August 2, 2021.

**ADDRESSES:** These documents are available upon written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

Written comments on this application should be submitted via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include File No. 25761 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Shasta McClenahan, Ph.D. or Sara Young, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film pinnipeds in Washington for a film about the foraging and hunting behavior of harbor seals (*Phoca vitulina*). Pinnipeds may be filmed from land, an unmanned aircraft system, and underwater via a stationary camera, pole camera, or snorkelers. Up to 450 harbor seals and 90 California sea lions (*Zalophus californianus*) may be filmed annually. The permit would be valid for two years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 28, 2021.

**Julia Marie Harrison,**  
Chief, Permits and Conservation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.

[FR Doc. 2021-14043 Filed 6-30-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB198]

#### Caribbean Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Caribbean Fishery Management Council (CFMC) will hold the 174th public meeting (virtual) to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The 174th CFMC public meeting (virtual) will be held on July 21, 2021, from 9 a.m. to 4 p.m. The meeting will be at AST (U.S. Caribbean time, presently same as EST).

**ADDRESSES:** You may join the 174th CFMC public meeting (virtual) via Zoom, from a computer, tablet or smartphone by entering the following address:

*Join Zoom Meeting: <https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUTkck8xYk1XOXNDY1ErZz09>*

*Meeting ID:* 830 6068 5915.

*Passcode:* 995658.

*One tap mobile:*

+17879451488,,83060685915#,,,,,0#,,

995658# Puerto Rico

+17879667727,,83060685915#,,,,,0#,,

995658# Puerto Rico

*Dial by your location:*

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

*Meeting ID:* 830 6068 5915.

*Passcode:* 995658.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet or smartphone. <https://global.gotomeeting.com/join/971749317>. You can also dial in using your phone. United States: +1 (408) 650-3123, Access Code: 971-749-317.

**FOR FURTHER INFORMATION CONTACT:**

Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903, telephone: (787) 398-3717.

**SUPPLEMENTARY INFORMATION:** The following items included in the tentative agenda will be discussed:

July 21, 2021

9 a.m.–9:30 a.m.

—Call to Order

—Roll Call

—Adoption of Agenda

—Consideration of 173rd Council Meeting Verbatim Transcriptions

—Executive Director's Report

9:30 a.m.–10:30 a.m.

—Five year Strategic Plan Presentation—Dr. M. Duval

10:30 a.m.–11 a.m.

—Update on Fishery Ecosystem Plan Stakeholder Engagement Workshops—Dr. M. Duval

11 a.m.–11:30 p.m.

—SSC Report—Dr. Richard Appeldoorn

11:30 a.m.–12 p.m.

—Closed Seasons for Certain Species—Dr. Mitchell Scharer

12 p.m.–1 p.m.

—Lunch

1 p.m.–1:30 p.m.

—Draft Tech Memo on Managing with ACLs for Data-Limited Stocks.

1:30 p.m.–2 p.m.

—Enforcement Issues with Nassau Grouper and other Fish Species in St. Thomas/St. John, USVI

2 p.m.–2:30 p.m.

—DAP Chairs Report on Buoy Gear Federal Regulations

2:30 p.m.–4 p.m.

—Other Business

—Capt. Silva's Letter on Deepwater Snapper Grouper Fishery (Letter in Spanish to be Read into the Record for Translation)

—Public Comment Period (5 minutes each)

—Next Council Meetings

—Adjourn

**Note (1):** Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

**Note (2):** Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The

meeting will begin on July 21, 2021, at 9 a.m. AST, and will end on July 21, 2021, at 4 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

### Special Accommodations

Simultaneous interpretation will be provided.

For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: June 25, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021–14005 Filed 6–30–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO–P–2021–0020]

### Properly Presenting Prophetic and Working Examples in a Patent Application

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is reminding applicants that patent applications must properly present examples in a manner that clearly distinguishes between prophetic examples that describe predicted experimental results and working examples that report actual experimental results. The distinction must be clear to satisfy the written description and enablement requirements and comply with the applicant’s duty of disclosure.

**FOR FURTHER INFORMATION CONTACT:** Ali Salimi, Senior Legal Advisor, at 571–272–0909, and Raul Tamayo, Senior Legal Advisor, at 571–272–7728, both with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, USPTO.

**SUPPLEMENTARY INFORMATION:** The USPTO is reminding patent applicants of their duty to ensure that patent applications are written in a manner that clearly distinguishes prophetic examples with predicted experimental results from working examples with actual experimental results.

### Prophetic Versus Working Examples

Prophetic examples, also called paper examples, are typically used in a patent application to describe reasonably expected future or anticipated results. Prophetic examples describe experiments that have not in fact been performed. Rather, they are presented in a manner that forecasts simulated or predicted results. In contrast, working examples correspond to work performed or experiments conducted that yielded actual results. The Manual of Patent Examining Procedure (MPEP) states that prophetic examples should not be described using the past tense. MPEP 608.01(p), subsection II. Prophetic examples may be written in future or present tense. This drafting technique assists readers in differentiating between actual working examples and prophetic examples.

### Written Description and Enablement Requirements

To be complete, the contents of a patent application must include a specification containing a written description of the invention that enables any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date. *See* 35 U.S.C. 112(a). At least one specific operative embodiment or example of the invention must be set forth. The example(s) and description should be sufficient to justify the scope of the claims. MPEP 608.01(p). The specification need not contain an example if the invention is otherwise disclosed in such a manner that one skilled in the art will be able to practice it without an undue amount of experimentation. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642, 645 (CCPA 1970). *See* MPEP 2164.02.

The courts have sanctioned the use of prophetic examples to meet the written description and enablement requirements for a patent application. *See, e.g., Allergan, Inc. v. Sandoz Inc.*, 796 F.3d 1293, 1310 (Fed. Cir. 2015) (“efficacy data are generally not required in a patent application” and “a patentee is not required to provide actual working examples”). A patent application does not need to provide a guarantee that a prophetic example actually works. *Id.* at 1310. “Only a sufficient description enabling a person

of ordinary skill in the art to carry out an invention is needed.” *Id.* The courts have further cautioned that the presence of prophetic examples alone should not be the basis for asserting that a specification is not enabling; rather, a lack of operative embodiments and undue experimentation should be determinative. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1577 (Fed. Cir. 1984).

Disclosed results of tests and examples, whether working or prophetic examples, in a patent application are not normally questioned unless there is a reasonable basis for doing so. However, when prophetic examples are described in a manner that is ambiguous or that implies that the results are actual, the adequacy and accuracy of the disclosure may come into question. If the characterization of the results, when taken in light of the disclosure as a whole, reasonably raises any questions as to whether the results from the examples are actual, the examiner will determine whether to reject the appropriate claims based on an insufficient disclosure under the enablement and/or written description requirements of 35 U.S.C. 112(a) following the guidance in MPEP 2164 and 2163, respectively. When such a rejection(s) is made, the applicant may reply with the results of an actual test or example that has been conducted, or by providing relevant arguments and/or declaration evidence that there is strong reason to believe that the result would be as predicted, being careful not to introduce new matter into the application. MPEP 707.07(l) and 2161–2164.08(c).

### Applicant’s Duty of Disclosure

Care should be taken to see that inaccurate or misleading statements, inaccurate evidence, or inaccurate experiments are not introduced into the record. MPEP 2004 sets forth best practices to avoid duty of disclosure problems (*see, in particular, MPEP 2004, item 8*). As noted above, prophetic examples should not be described using the past tense. *Hoffmann-La Roche, Inc. v. Promega Corp.*, 323 F.3d 1354, 1367 (Fed. Cir. 2003) (improperly identifying a prophetic example in the past tense validly raises an inequitable conduct issue based on the intent of the inventors in drafting the example in the past tense, when the example, in fact, is prophetic). Knowingly asserting in a patent application that a certain result “was run” or an experiment “was conducted” when, in fact, the experiment was not conducted or the result was not obtained is fraud. *Apotex Inc. v. UCB, Inc.*, 763 F.3d 1354, 1362

(Fed. Cir. 2014) (the inventor “admitted that he never performed the experiments described in the . . . patent, and yet he drafted the examples in the specification entirely in past-tense language.”). No results should be represented as actual results unless they have actually been achieved. Distinguishing prophetic examples from working examples in a clear manner will avoid raising issues relating to the applicant’s duty of disclosure.

### Best Practices

When drafting a patent application, care must be taken to ensure the proper tense is employed to describe experiments and test results so readers can readily distinguish between actual results and predicted results. Any ambiguities should be resolved so a person having ordinary skill in the art reading the disclosure, including those who may not have the level of skill of the inventor, can rely on the disclosure as an accurate description of experiments that support the patent claim coverage. It is a best practice to label examples as prophetic or otherwise separate them from working examples to avoid ambiguities. Such presentation will help a reader easily distinguish prophetic examples from working examples with actual experimental results and will enhance the public’s ability to rely on the patent disclosure.

### 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. 2021–14034 Filed 6–30–21; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[Docket ID: USAF–2021–HQ–0003]

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Air Force, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Aircraft and Personnel Automated Clearance System (APACS); OMB Control Number 0701–0160.  
*Type of Request:* Extension.  
*Number of Respondents:* 492,000.  
*Responses per Respondent:* 1.  
*Annual Responses:* 492,000.  
*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 246,000.  
*Needs and Uses:* The information collection requirement is necessary to obtain PII which is used by in-country U.S. Embassy approvers to grant country travel clearances, Geographical Combatant Commands approvers to grant theater travel clearances, and by the Office of Secretary of Defense for Policy approvers to grant special area travel clearances. Aircrew PII is used for verification, identification and authentication of travelers for aircraft and personnel travel clearances, as required by DoDD 4500.54E, DoD Foreign Clearance Program.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent’s Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: June 28, 2021.

### Kayyonne T. Marston,

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2021–14073 Filed 6–30–21; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### Early Engagement Opportunity: Implementation of National Defense Authorization Act for Fiscal Year 2021

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** DoD announces an early engagement opportunity regarding implementation of the National Defense Authorization Act for Fiscal Year 2021 within the acquisition regulations.

**DATES:** Early inputs should be submitted in writing via the Defense Acquisition Regulations System (DARS) website shown below. The website will be updated when early inputs will no longer be accepted.

**ADDRESSES:** Submit early inputs via the DARS website at [https://www.acq.osd.mil/dpap/dars/early\\_engagement.html](https://www.acq.osd.mil/dpap/dars/early_engagement.html).

### FOR FURTHER INFORMATION CONTACT:

Jennifer Johnson, Tel: 703–717–8226. Send inquiries via email to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil) and reference “Early Engagement Opportunity: Implementation of NDAA for FY 2021” in the subject line.

**SUPPLEMENTARY INFORMATION:** DoD is providing an opportunity for the public to provide early inputs on implementation of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 within the acquisition regulations. The public is invited to submit early inputs on sections of the NDAA for FY 2021 via the DARS website at [https://www.acq.osd.mil/dpap/dars/early\\_engagement.html](https://www.acq.osd.mil/dpap/dars/early_engagement.html). The website will be updated when early inputs will no longer be accepted. Please note, this venue does not replace or circumvent the rulemaking process. DARS will engage in formal rulemaking, in accordance with 41 U.S.C. 1707, when it has been determined that rulemaking is required to implement a

section of the NDAA for FY 2021 within the acquisition regulations.

**Authority:** DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2021-14009 Filed 6-30-21; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2021-OS-0056]

#### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to OMB to collect information on establishing an understanding of the beliefs and attitudes of active component mid-grade (O-4 to O-6) and junior officers (O-2 to O-3) toward diversity and inclusion (D&I), retention and promotion, and specifically any perceived differences of retention and promotion related to race, ethnicity, and gender. The study will identify potential and existing factors that serve as barriers in retention and promotion to inform D&I policies, programs, and procedures.

**DATES:** Comments must be received by July 16, 2021.

**ADDRESSES:** The Department has requested emergency processing from OMB for this information collection request by 15 days after publication of this notice. Interested parties can access the supporting materials and collection instrument and submit comments and recommendations to OMB at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 15-day Review—Open for Public Comments" or by using the search function. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571-372-7574, or

*whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:** The Officer Retention and Promotion Barrier Analysis is a qualitative study which will include virtual interviews and focus groups with active component mid-grade and junior officers from Army, Navy, Air Force, and Marine Corps to examine their beliefs and attitudes toward D&I, retention and promotion, and specifically any perceived differences of retention and promotion related to race, ethnicity, and gender. The study will identify potential and existing factors that serve as barriers which may affect such differences in retention and promotion. The study will assess topics related to retention and promotion such as career progression and mentorship, leadership, workplace climate and culture, and work-life balance. The Office of Diversity, Equity, and Inclusion (ODEI) will analyze data in aggregate and provide key themes that emerge. In order to meet reporting requirements per the Fiscal Year (FY) 2021 National Defense Authorization Act (NDAA), the study needs to begin in FY 2021 and completed by FY 2022. As required by the NDAA, the study will identify barriers to diversity to assist in developing and implementing plans and processes to resolve or eliminate any barriers to diversity, and reviewing the progress of the Services in implementing previous plans and processes to resolve or eliminate barriers to diversity.

*Title: Associated Form; and OMB Number: Officer Retention and Promotion Barrier Analysis; OMB Control Number 0704-ORPB.*

*Type of Request: Emergency.*

*Number of Respondents:* The study will include 340 respondents (total of 20 interview respondents and 320 focus group participants).

*Responses per Respondent: 1.*

*Annual Responses: 340.*

*Average Burden per Response:*

Interviews will require 60 minutes per response. Focus groups will require 90 minutes per response.

*Annual Burden Hours:* The total annual amount of burden hours for interviews is 20 hours. The total amount of annual burden for focus groups is 480 hours. The total annual burden hours are 500.

*Affected Public:* Individuals or households.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*Request for Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the

functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: June 28, 2021.

**Kayyonne T. Marston,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021-14075 Filed 6-30-21; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2021-OS-0055]

#### Request for Information Related to IP Evaluation and Valuation Methods and Techniques

**AGENCY:** Office of the Deputy Assistant Secretary of Defense (Acquisition Enablers), Department of Defense (DoD).

**ACTION:** Request for information.

**SUMMARY:** The Secretary of Defense is soliciting information from the public (including, but not limited to, the private sector, academia, and other interested parties) related to Intellectual Property (IP) evaluation and valuation methods and techniques.

**DATES:** The due date for submitting comments is August 2, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Winborne, Communications, Knowledge and Performance Management Lead, Intellectual Property Cadre, Office of the USD (Acquisition & Sustainment), at 202–815–3995, or email: [george.o.winborne.civ@mail.mil](mailto:george.o.winborne.civ@mail.mil).

**SUPPLEMENTARY INFORMATION:** The DoD has been authorized to carry out a Pilot Program on IP Evaluation for Acquisition Programs under Section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020. To gain a better understanding of IP valuation and evaluation strategies and recommendations, the Pilot Program seeks to obtain the views of industry, academia, and the public.

Given the broad functional, technical, and operational considerations of the DoD and the assessment scope spanning IP evaluation and valuation methods and techniques, interested parties do not need to respond to every category of information requested or question and may choose to offer additional information pertinent to the topic in the manner or format they prefer.

Interested parties may respond to questions pertinent to their organization's technical focus, expertise, and evaluation and/or valuation capabilities. Submitted responses are entirely voluntary, may be unstructured, and should include only public information (*e.g.*, do not include proprietary, business sensitive, or other forms of confidential information). Although not required, respondents are encouraged to identify the industry, academic, or occupational sector to which they belong.

The following guidance applies generally to all responses to questions in topic areas (1) through (6) below.

A. Each response should consider and identify the extent to which the response may be limited or otherwise affected by—

- The particular industry or academic sector;
- The particular technologies involved;
- The type of IP protections governing the technology;
- The particular type of contract or contracting vehicle used;
- Whether your organization is responding as an IP/technology purchaser, seller, or both; and;
- Whether your organization is a prime contractor, subcontractor, or both.

B. Responses should include only public information (*e.g.*, do not include proprietary, business sensitive, or other forms of confidential information). However, if applicable, the response may indicate that additional responsive

information may be available but is not being provided because it is non-public and would be subject to confidentiality restrictions. Preferably, in such cases the response will provide information in a more abstract or generic form that may still provide information responsive to the question, but would not contain any detailed, non-public information.

### (1) Assessment Mechanisms for Program IP Evaluation

a. What IP evaluation mechanisms and techniques used by your organization, or your industry or academic sector in general, could be adapted for use in DoD acquisition programs?

Please rank the IP evaluation mechanisms identified in your answer above from the most beneficial to those that are less promising, and provide any relevant examples and rationale for such ranking.

b. What commercially available IP valuation analysis and methods used by your organization, or your industry or academic sector in general, could be adapted for use in DoD acquisition programs?

Please rank the IP valuation analysis and methods identified in your answer above from the most beneficial to those that are less promising, and provide any relevant examples and rationale for such ranking.

a. Please identify any other emerging, innovative, novel, or otherwise “outside of the box” methods for IP valuation, prioritization, and IP evaluation techniques not identified above (in your responses to questions 1a. or 1b.) that could be adapted for use in DoD acquisition programs.

b. Please identify acquisition planning and technology assessment techniques used by your organization, or your industry or academic sector in general, to analyze the use of a commercial product or service or non-developmental item as an alternative to acquiring a product or service that must be specifically developed for a particular DoD acquisition program.

### (2) Development of Cost-Effective IP Strategies

a. What does your organization, or your industry or academic sector in general, consider best practices for utilizing IP valuation and evaluation methods to develop cost-effective IP strategies?

b. What factors should DoD consider in developing IP strategies that plan for uncertainties (*e.g.*, design, requirement changes; emergence of disruptive technologies; selection of particular vendors; defining the sustainment

strategy) associated with predicting downstream events, and for identifying appropriate flexibility and other potential options, when these uncertainties become more defined?

### (3) Assessment and Management of IP Value and Costs

a. Given the specialized mechanisms governing IP acquisitions in the national defense mission space, how can the DoD best identify, assess, and validate the value of different kinds of IP across the acquisition lifecycle?

### (4) Cross-Functional Team of Subject Matter Experts

a. Does your organization, or your industry or academic sector in general, utilize a designated group or team of subject matter experts to identify and manage IP issues on behalf of the organization (*e.g.*, an IP Management Team; or a cadre of cross-functional subject matter experts analogous to that required for DoD at 10 U.S.C. 2322(b))?

b. If so, how is such team or group structured, and what functional areas of subject matter expertise are represented (*e.g.*, intellectual property, law, engineering, contracting, program management, product support and sustainment, financial analysis)?

### (5) Engagement With the Private Sector

a. In conducting the Section 801 Pilot Program, how can the DoD best engage the public (including but not limited to the private sector, academia, and other interested parties) to support and inform the development of IP strategies?

b. In general, what processes and procedures can the DoD implement to enable its acquisition programs to better engage with interested parties in identifying appropriate IP evaluation methods in the development of IP strategies, preservation of program flexibility, increases in cost-effectiveness, and improvements in sustainment efforts?

### (6) Future Activities

a. What specific topics and questions not discussed above should the DoD consider including as part of future requests for information related to this IP Pilot Program?

b. Please provide any additional comments or recommendations regarding the Section 801 Pilot Program that were not included in your answers above that may improve DoD's acquisition of IP.

c. Although this initial request for information is limited to responses having only publicly available information, the DoD recognizes that respondents may have non-public

information that would otherwise have been responsive to one or more questions. Please indicate whether your organization possesses any such non-public information (e.g., proprietary, business sensitive, or other forms of confidential information) that your organization may be willing to share with the DoD in support of this IP Pilot Program effort in the future, provided that such information could be shared subject to appropriate confidentiality protections. If so, please identify the nature or type of confidentiality protections that would be necessary to allow for such sharing (e.g., use and disclosure authorized only for particular purposes or to particular categories of organizations or individuals). As discussed, please note that your participation is voluntary and that your responses may be unstructured.

Dated: June 25, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021-14004 Filed 6-30-21; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2021-OS-0033]

#### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571-372-7574, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

#### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Defense Biometric

Identification System (DBIDS) Registration Application; OMB Control Number 0704-0455.

*Type of Request:* Extension.

*Number of Respondents:* 2,500,000.

*Responses per Respondent:* 1.

*Annual Responses:* 2,500,000.

*Average Burden per Response:* 7.5 minutes.

*Annual Burden Hours:* 312,500.

*Needs and Uses:* The information collection requirement is necessary to obtain and record the biographic and biometric data connected with positively identifying identity, eligibility for access, and fitness within DBIDS and shared with Identity Matching Engine for Security and Analysts (IMESA)/Interoperability Layer Service (IoLS). The form data is used in the determination of access at DBIDS sites and affiliated systems through use of IMESA/IoLS.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: June 28, 2021.

**Kayyonne T. Marston,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021-14074 Filed 6-30-21; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2021-OS-0010]

#### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Angela Duncan, 571-372-7574, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

#### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Certification of Qualified Products; DD Form 1718; OMB Control Number 0704-0487.

*Type of Request:* Extension.

*Number of Respondents:* 1,320.

*Responses per Respondent:* 1.

*Annual Responses:* 1,320.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 660.

*Needs and Uses:* The information collection requirement is necessary to obtain, certify, and record qualification of products or processes falling under the DoD Qualification Program. Qualification ensures continued product performance, quality, and reliability. DD Form 1718 is sent to manufacturers every two years by the Qualifying Activity when the applicable specification does not contain complete requalification testing, and requests that manufacturers complete the form, certifying that their products still meet the specification requirements as originally tested. DD Form 1718 is included as an exhibit in an appeal or hearing case file as evidence of the reviewers' products or process qualifications in advance of, and independent of, acquisition.



*Affected Public:* Business or other for-profit.

*Frequency:* Biennially.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: June 28, 2021.

**Kayyonne T. Marston,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021-14078 Filed 6-30-21; 8:45 am]

**BILLING CODE 5001-06-P**

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## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Sunshine Act notice; notice of public roundtable agenda.

**SUMMARY:** Roundtable Discussion: Voter Turnout and Trends For People with Disabilities During the 2020 General Election.

**DATES:** Wednesday, July 7, 2021, 10:00 a.m.–11:00 a.m. Eastern.

**ADDRESSES:** Virtual via Zoom.

The roundtable discussion is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw>.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Muthig, Telephone: (202) 897-9285, Email: [kmuthig@eac.gov](mailto:kmuthig@eac.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose:* In accordance with the Government in the Sunshine Act

(Sunshine Act), Public Law 94-409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual roundtable discussion on a new report analyzing voter turnout among citizens with disabilities during the 2020 general election.

*Agenda:* The U.S. Election Assistance Commission (EAC) will hold a roundtable discussion on a new report released by the EAC and the Program for Disability Research at Rutgers University. The report highlights new data on turnout for citizens with disabilities from the federal government's Current Population Survey Voting Supplement for November 2020 and provides additional context for the EAC comprehensive national report released in February 2021, "Disability and Voting Accessibility in the 2020 Elections." Professor Lisa Schur, Co-Director of the Program for Disability Research at Rutgers University and Distinguished Professor Douglas Kruse, Co-Director of the Program for Disability Research at Rutgers University will join the EAC Commissioners to discuss the findings on voter turnout, methods of voting, and other trends for voters with disabilities from the 2020 general election.

The full agenda will be posted in advance on the EAC website: <https://www.eac.gov>.

*Status:* This roundtable discussion will be open to the public.

**Amanda Joiner,**

*Associate Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2021-14174 Filed 6-29-21; 11:15 am]

**BILLING CODE P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 803-115]

#### Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Temporary Variance of Flow Requirements.

b. *Project No:* 803-115.

c. *Date Filed:* May 26, 2021, and supplemented June 2, 2021.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* DeSabra-Centerville Project.

f. *Location:* The project is located on Butte Creek, West Branch Feather River, and their tributaries in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Ms. Jackie Pope, License Coordinator, Pacific Gas and Electric Company, Mail Code: N11D, P.O. Box 770000, San Francisco, CA 94177, Phone: (530) 254-4007.

i. *FERC Contact:* John Aedo, (415) 369-3335, [john.aedo@ferc.gov](mailto:john.aedo@ferc.gov).

j. *Deadline for filing comments, motions to intervene, and protests:* July 26, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-77-306. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance of the minimum flow requirements in the West Branch Feather River below the Hendricks Head Dam, in Butte Creek

below the Butte Head Dam, and in Philbrook Creek below Philbrook Dam. The licensee requests that the instantaneous dry year minimum flow requirement of 7 cubic feet per second (cfs) at Hendricks Head and Butte Head Diversion Dams be temporarily modified to a 7 cfs, 48-hour average minimum flow. The licensee states that the temporary variance would eliminate the need to release additional buffer flows of 4 to 5 cfs and instead, allocate those flows to the lower reaches of Butte Creek, where Central Valley spring-run Chinook salmon are currently holding. In addition, the licensee requests that the minimum flow requirement in Philbrook Creek be reduced to 0.8 cfs, with a 0.2 cfs buffer, for a total of 1 cfs.

The licensee requests the variance due to exceptionally dry conditions and limited water availability in the project area. Additionally, the licensee states that the proposed variance would preserve cold water storage in Philbrook Reservoir, increase flow to Butte Creek via the Hendricks Canal, and decrease water residence time in the DeSabra Forebay, thus providing additional water to Butte Creek during the hot summer months to minimize high temperature effects to spring-run Chinook salmon, and to preserve water for release later in the summer months. The licensee would also provide monthly flow records to the resource agencies and notify them of any flow disruptions related to the variance. The licensee requests the variance until February 28, 2022 to protect spawning and redds, but may end the variance earlier if fall or winter rains bring precipitation to early spring-run Chinook salmon life stages, and in consultation with the project resource group. Due to the urgent nature of the variance request, Commission staff is approving the variance for a limited time (until August 12, 2021) until the public has an opportunity to review and comment on the licensee's proposal. Following the close of the public notice period and consideration of any comments received, Commission staff will take action on the remaining timeline associated with the licensee's request.

**1. Locations of the Application:** This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: Jun 25, 2021.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2021-14065 Filed 6-30-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21-181-000.  
*Applicants:* Ensign Wind Energy, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Ensign Wind Energy, LLC.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625-5058.

*Comments Due:* 5 p.m. ET 7/16/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17-1609-003; ER19-1215-002.

*Applicants:* Carroll County Energy LLC, Cricket Valley Energy Center, LLC.

*Description:* Response to May 27, 2021 Deficiency Letter of Carroll County Energy LLC, et al.

*Filed Date:* 6/22/21.

*Accession Number:* 20210622-5177.

*Comments Due:* 5 p.m. ET 7/13/21.

*Docket Numbers:* ER20-277-002.

*Applicants:* Southwestern Public Service Company.

*Description:* Compliance filing: ER20-277-001 Settlement Compliance Filing to be effective 1/1/2020.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625-5022.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21-2207-000.

*Applicants:* Public Service Company of Oklahoma.

*Description:* § 205(d) Rate Filing: Coffeyville to be effective 6/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625-5009.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21-2208-000.

*Applicants:* AEP Indiana Michigan Transmission Company, Inc., PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: AEP submits Revisions to PJM Tariff, Att. H-20B Parts I and II to be effective 7/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625-5012.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21-2210-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 1976R10 FreeState Electric Cooperative, Inc. NITSA and NOA to be effective 9/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625-5020.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21-2211-000.

*Applicants:* Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

*Description:* § 205(d) Rate Filing: 2021-06-25 SA 3670 ATC-Springfield Solar Farm E&P (J1171) to be effective 6/23/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5044.  
*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21–2212–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 1977R16 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 9/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5054.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21–2213–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3620R3 Kansas City Board of Public Utilities NITSA NOA to be effective 9/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5101.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21–2214–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2021–06–25\_Att X Financial Improvements and PGIA Filing to be effective 8/25/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5115.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21–2215–000.

*Applicants:* Peoples Natural Gas.

*Description:* Baseline eTariff Filing: Peoples Natural Gas LLC MBR Tariff Filing to be effective 6/28/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5138.

*Comments Due:* 5 p.m. ET 7/16/21.

*Docket Numbers:* ER21–2216–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2881R13 City of Chanute, KS NITSA NOA to be effective 9/1/2021.

*Filed Date:* 6/25/21.

*Accession Number:* 20210625–5142.

*Comments Due:* 5 p.m. ET 7/16/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 25, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–14131 Filed 6–30–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 6972–033]

#### **Ampersand Hollow Dam Hydro LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process**

a. *Type of Application:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 6972–033.

c. *Date filed:* April 29, 2021.

d. *Submitted by:* Ampersand Hollow Dam Hydro LLC (Ampersand Hydro).

e. *Name of Project:* Hollow Dam Hydroelectric Project.

f. *Location:* Located on the West Branch Oswegatchie River in the town of Fowler, St. Lawrence County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Sayad Moudachirou, Licensing Manager, Ampersand Hollow Dam Hydro LLC, 717 Atlantic Avenue, Boston, MA 02111, Phone: (617) 933–7200, Email: [sayad@ampersandenergy.com](mailto:sayad@ampersandenergy.com).

i. *FERC Contact:* John Stokely, Phone: (202) 502–8534, Email: [john.stokely@ferc.gov](mailto:john.stokely@ferc.gov).

j. Ampersand Hydro filed its request to use the Traditional Licensing Process on April 29, 2021. Ampersand Hydro provided public notice of its request on May 7, 2021. In a letter dated June 25, 2021, the Director of the Division of Hydropower Licensing approved Ampersand Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA

Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. The applicant filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208 3676 (toll free), or (202) 502–8659 (TTY).

n. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 6972. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2024.

o. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: June 25, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–14064 Filed 6–30–21; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 2042–191]

**Public Utility District No. 1 of Pend Oreille County, Washington; Notice of Availability of Environmental Assessment**

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed an application submitted by Public Utility District No. 1 of Pend Oreille County, Washington to amend the license for the Box Canyon Project No. 2042, and has prepared an Environmental Assessment (EA) for the proposed amendment. The licensee proposes an amendment of the project license to be consistent with the terms of an Amended Settlement Agreement and to incorporate revised mandatory conditions submitted by the U.S. Department of the Interior under section 4(e) and section 18 of the Federal Power Act. The project is located on the Pend Oreille River in Pend Oreille County, Washington, and Bonner County, Idaho and occupies lands within the Kalispel Indian Reservation and lands within the Colville National Forest.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the license, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link. Enter the docket number (P–2042) in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp) to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Holly Frank at (202) 502–6833, or by email at [holly.frank@ferc.gov](mailto:holly.frank@ferc.gov).

Dated: June 25, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021–14066 Filed 6–30–21; 8:45 am]

BILLING CODE 6717–01–P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP20–527–000]

**Columbia Gulf Transmission, LLC; Notice of Availability of The Draft Environmental Impact Statement for The Proposed East Lateral Xpress Project**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the East Lateral Xpress Project (Project), proposed by Columbia Gulf Transmission, LLC (Columbia Gulf) in the above-referenced docket. Columbia Gulf requests authorization to construct and operate natural gas transmission facilities in Louisiana. The Project is designed to provide a total of 725 million standard cubic feet per day of firm transportation capacity, through a combination of incremental and existing capacity on Columbia Gulf's interstate natural gas pipeline system, to an interconnect with Venture Global Gator Express, LLC, for ultimate delivery as feed gas for Venture Global Plaquemines LNG, LLC's facility in Plaquemines Parish.

The draft EIS responds to comments that were received on the Commission's March 16, 2021 Environmental Assessment (EA)<sup>1</sup> and discloses downstream greenhouse gas emissions for the Project. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

The draft EIS incorporates the above referenced EA, which addressed the potential environmental effects of the construction and operation of the following Project facilities:

- 8.1 miles of 30-inch-diameter pipeline lateral within Barataria Bay in

Jefferson and Plaquemines Parish, Louisiana;

- Centerville Compressor Station—a new 23,470-horsepower (hp) compressor station at an abandoned Columbia Gulf compressor station site in St. Mary Parish, Louisiana;
- Golden Meadow Compressor Station—a new 23,470-hp compressor station adjacent to an existing tie-in facility in Lafourche Parish, Louisiana;
- a point of delivery meter station in Plaquemines Parish, Louisiana; and
- a tie-in facility with two mainline valves and other appurtenances on a new platform in Barataria Bay, Jefferson Parish, Louisiana.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed East Lateral Xpress Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website ([www.ferc.gov](http://www.ferc.gov)), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>) select "General Search" and enter the docket number in the "Docket Number" field (i.e., CP20–527). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on the draft EIS's disclosure and discussion of potential environmental effects, including climate impacts, measures to avoid or lessen environmental impacts, and completeness of the submitted alternatives, information and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on August 16, 2021.

<sup>1</sup> The Project's Environmental Assessment is available on eLibrary under accession no. 20210316–3010.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20-527-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <https://www.ferc.gov/ferc-online/ferc-online/how-guides>. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

### Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: June 25, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-14067 Filed 6-30-21; 8:45 am]

**BILLING CODE 6717-01-P**

### ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OECA-2013-0327; FRL-10025-82-OMS]**

#### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Portland Cement Plants (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Portland Cement Plants (EPA ICR Number 1051.15, OMB Control Number 2060-0025), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2021. Public comments were previously requested, via the **Federal Register** (85 FR 28003), on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before August 2, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2013-0327, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: [yellin.patrick@epa.gov](mailto:yellin.patrick@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](http://www.regulations.gov), or in person, at the EPA Docket Center, EPA 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>.

**Abstract:** Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the specific requirements at 40 CFR part 60, subpart F. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are

used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Portland cement plants.

*Respondent's obligation to respond:* Mandatory (40 CFR part 60, subpart F).

*Estimated number of respondents:* 92 (total).

*Frequency of response:* Initially and semiannually.

*Total estimated burden:* 14,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$2,390,000 (per year), which includes \$744,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the estimates:* There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The decrease in burden from the most-recently approved ICR is due to a decrease in the number of affected existing facilities, as identified by a review of Portland cement facilities reporting in EPA's ECHO and GHGRP databases. This change also results in a decrease in operation and maintenance costs. This ICR maintains an assumption that there will be no new respondents over the next three years, but two existing plants will undergo modification or reconstruction. Therefore, the capital costs have not changed from the previous ICR.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021-14124 Filed 6-30-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2013-0323; FRL-10025-85-OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Electric Arc Furnace Steelmaking Facilities (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Electric Arc Furnace Steelmaking Facilities (EPA ICR Number 2277.06, OMB Control Number 2060-0608), to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2021. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before August 2, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2013-0323, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: [yellin.patrick@epa.gov](mailto:yellin.patrick@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](http://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>.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Electric Arc Furnace Steelmaking Facilities (40 CFR part 63, subpart YYYYY) apply to existing facilities and new Electric Arc Furnace (EAF) steelmaking facilities that are area sources of hazardous air pollutants (HAP) emissions. These standards establish particulate matter (PM) emission limits for control devices and opacity limits for melt shops, pollution prevention requirements for ferrous scrap that is melted in EAFs, and monitoring, reporting, and recordkeeping requirements. New facilities include those that commenced construction or reconstruction after the date of proposal. NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Owners or operators of electric arc furnace steelmaking facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart YYYYY).

*Estimated number of respondents:* 81 (total).

*Frequency of response:* Initially, semiannually, and occasionally.

*Total estimated burden:* 4,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$485,000 (per year), which includes \$15,500 in annualized capital/startup costs. There are no operation & maintenance costs.

*Changes in the Estimates:* There is an adjustment decrease in the total estimated respondent burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The decrease in burden from the most-recently approved ICR is due to a decrease in the number of affected existing facilities, as identified by a review of the EAF facility source list and by consulting with internal Agency experts at OAQPS. This change also results in an increase in capital/startup costs. The previous ICR did not account for any capital/startup costs as the growth rate for the industry was very

low during that time period, so no initial compliance costs were associated with these standards. However, we expect that there will be 1.6 new respondents each year over the next three years, and the increase in capital/startup costs accounts for the cost of initial performance testing for those facilities. Despite this increase in capital/startup costs, the overall cost estimate for this burden has decreased due to a decrease in the number of currently existing facilities.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021-14119 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2016-0731; FRL-10025-85-OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's Methane Challenge and Natural Gas STAR Programs (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), EPA's Methane Challenge and Natural Gas STAR Programs (EPA ICR Number 2547.02, OMB Control Number 2060-0722) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed revision of the ICR for the Methane Challenge Program, which is currently approved through August 31, 2021. This revision incorporates the data collection for the Natural Gas STAR Program (currently approved under OMB Control Number 2060-0328). Public comments were previously requested via the **Federal Register** on January 19, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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:** Additional comments may be submitted on or before August 2, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2016-0731, online using

[www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Andrew Meluch, Office of Atmospheric Programs, Climate Change Division, (6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-4762; email address: [meluch.andrew@epa.gov](mailto:meluch.andrew@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](http://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>.

**Abstract:** The Natural Gas STAR and Methane Challenge programs ("Gas STAR Programs") are voluntary programs sponsored by the EPA that encourage oil and natural gas companies to adopt cost effective technologies and practices that improve operational efficiency and reduce methane emissions. Methane is the primary component of natural gas and a potent greenhouse gas. The Programs work with oil and natural gas companies in the production, gathering & boosting, processing, transmission & storage, and distribution segments to remove barriers that inhibit the implementation of technologies and practices that reduce methane emissions. The Programs effectively promote the adoption of emission reduction technologies and practices by helping partners evaluate Best Management Practices (BMPs) in

the context of their current operations and implement them where cost-effective. Implementation of the Programs' BMPs saves participants money, improves operational efficiency, and enhances the protection of the environment. This action will combine the ICRs for the Methane Challenge and the Natural Gas STAR programs, which is expected to streamline partners' engagement with the programs and simplify communications about reporting.

#### Form Numbers:

- **Natural Gas STAR Program—Partnership Agreement:** EPA Form No. 5900-105
- **Methane Challenge Program—Partnership Agreement for Best Management Practice Commitment Option:** EPA Form No. 5900-412
- **Methane Challenge Program—Partnership Agreement for ONE Future Emissions Intensity Commitment Option:** EPA Form No. 5900-411
- **Natural Gas STAR Program—Production Reporting Form:** EPA Form No. 5900-104
- **Natural Gas STAR Program—Transmission Reporting Form:** EPA Form No. 5900-95
- **Natural Gas STAR Program—Distribution Reporting Form:** EPA Form No. 5900-99
- **Natural Gas STAR Program—Gathering and Processing Reporting Form:** EPA Form No. 5900-102
- **Methane Challenge Program—BMP Commitment Option Reporting Form:** EPA Form No. 5900-434
- **Methane Challenge Program—ONE Future Commitment Option Reporting Form:** EPA Form No. 5900-435
- **Methane Challenge Program—Historical Actions Fact Sheet Template:** EPA Form No. 5900-413
- **Methane Challenge Program—Implementation Plan Template:** EPA Form No. 5900-410

**Respondents/affected entities:** The Natural Gas STAR and Methane Challenge Programs are open to companies in the production segment of the oil industry, and to companies in the production, gathering & boosting, processing, transmission & storage, and distribution segments of the natural gas industry.

**Respondent's obligation to respond:** Voluntary.

**Estimated number of respondents:** 140 (54 Natural Gas STAR partners, 76 Methane Challenge partners and 10 vendors).

**Frequency of response:** Annual for partners and one time for vendors.

**Total estimated burden:** 1,126 hours (per year) for the Natural Gas STAR



Program, plus 3,733 hours (per year) for the Methane Challenge Program. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$130,865.00 (per year) for the Natural Gas STAR Program plus \$357,862.00 (per year) for the Methane Challenge Program. There are no capital/start-up costs or O&M costs associated with this information collection.

*Changes in the estimates:* There is an increase of 1,675 hours (per year) in the estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to modifying this ICR to include the addition of respondents from the Natural Gas STAR Program. However, the final total burden for the total of the two programs in this ICR renewal is less than the sum of the burdens for Natural Gas STAR and Methane Challenge Programs in their most recent ICRs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021-14125 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0041; FRL-10025-81-OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Glass Manufacturing Plants (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Glass Manufacturing Plants (EPA ICR Number 1131.13, OMB Control Number 2060-0054), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2021. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before August 2, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0041 online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: [yellin.patrick@epa.gov](mailto:yellin.patrick@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](http://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>.

*Abstract:* The New Source Performance Standards (NSPS) for Glass Manufacturing Plants (40 CFR part 60, subpart CC) were proposed on June 15, 1979; promulgated on October 7, 1980; and amended on both October 19, 1984, and October 17, 2000. These regulations apply to both existing and new glass melting furnaces located at glass manufacturing plants. Owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the General Provisions (40 CFR part 60,

subpart A), as well as for the specific requirements at 40 CFR part 60, subpart CC. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. This information is being collected to assure compliance with 40 CFR part 60, subpart CC.

*Form Numbers:* None.

*Respondents/affected entities:* Glass manufacturing facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 60, subpart CC).

*Estimated number of respondents:* 41 (total).

*Frequency of response:* Semiannually.

*Total estimated burden:* 850 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$338,000 (per year), which includes \$238,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021-14122 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2013-0348; FRL-10025-83-OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Aluminum Reduction Plants (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), NESHAP for Primary Aluminum Reduction Plants (EPA ICR Number 1767.09, OMB Control Number 2060–0360), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2021. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before August 2, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0348, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: [yellin.patrick@epa.gov](mailto:yellin.patrick@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](http://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>.

**Abstract:** Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63, subpart LL. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

**Form Numbers:** None.

**Respondents/affected entities:**

Primary aluminum production located at a major source.

**Respondent's obligation to respond:** Mandatory (40 CFR part 63, subpart LL).

**Estimated number of respondents:** 8 (total).

**Frequency of response:** Initially, annually, and semiannually.

**Total estimated burden:** 52,300 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** \$6,440,000 (per year), which includes \$310,000 in annualized capital/startup and/or operation & maintenance costs.

**Changes in the estimates:** There is a decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The adjustment decrease in burden from the most-recently approved ICR is due to a decrease in the number of sources. The currently approved ICR assumed 11 respondents. Consultations with the Aluminum Association conducted during the renewal of this ICR revealed that there are only eight primary aluminum reduction plants currently subject to this subpart. This decrease in the number of respondents has resulted in a decrease in respondent labor hours. This ICR adjusts the capital cost from the previously-approved ICR to reflect costs from the October 15, 2015 rule, which were annualized over a 15 year period; the previous ICR assumed that all capital costs were completed within the first three years of the 2015 final rule. This ICR also adjusts the operation and maintenance (O&M) costs from the previous ICR from 1997 dollars to 2019

dollars using the CEPCI CE Index, and includes O&M costs for annual monitoring from the 2015 final rule that were inadvertently excluded from the previous ICR. Therefore, this ICR reflects a modest increase in capital and O&M costs from the most-recently approved ICR. This ICR also corrects the total number of responses to reflect the submittal of performance test reports on a semiannual basis, which were inadvertently excluded from the previous ICR. This ICR, by in large, reflects the on-going burden and costs for existing facilities. Activities for existing sources include annual and semiannual performance tests, continuous monitoring of pollutants, and the submission of semiannual reports.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021–14120 Filed 6–30–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–10025–45]

### United States Department of Justice and Parties to Certain Litigation; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and/or the Toxic Substances Control Act (TSCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, has been and will be transferred to the U.S. Department of Justice (DOJ) for transfer to the parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

**DATES:** Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this Notice.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Colby Linter, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC

20460-0001; telephone number: (202) 564-8182; email address: [lintner.colby@epa.gov](mailto:lintner.colby@epa.gov).

**SUPPLEMENTARY INFORMATION:** This notice is being provided pursuant to 40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *In Re: Aqueous Film-Forming Foams Products Liability Litigating* (MDL No. 2:18-mn-2873-RMG) (D.S.C.) (“AFFF litigation”). The information is contained in documents that have been submitted to EPA pursuant to FIFRA, the FFDCa, and/or TSCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially contain, CBI.

The AFFF Litigation is Multidistrict Litigation established in December 2018 involving over 1,000 consolidated Per- and polyfluoroalkyl substances (PFAS) cases in the U.S. District Court for the District of South Carolina, primarily alleging tort claims against private parties, including manufacturers, for products liability, public nuisance, and negligence concerning the manufacture and use of Aqueous Film-Forming Foams (AFFF).

Although the primary focus of the litigation is on the manufacturers of AFFF, the United States is a party to 24 lawsuits relating to discharges of AFFF that allegedly contaminated drinking water at various federal sites, such as Air Force bases. The primary federal agencies named as defendants are the Air Force, the National Guard Bureau, and the Department of Defense, but EPA is a named defendant in one *pro se* case.

EPA is under an obligation to respond to Requests for Production (RFPs) in *In Re: Aqueous Film-Forming Foams Products Liability Litigating* (MDL No. 2:18-mn-2873-RMG) (D.S.C.). The case has entered the discovery phase, and although a final Scheduling Order has not yet been entered, the Court has ordered expedited discovery. The documents being produced may include “Confidential Business Information” such as any material or words with rights that may be protected under the U.S. Copyright Act of 1976, Public Law 94-553, 90 Stat. 2541, codified, as amended, at Title 17 of the U.S. Code; trade secrets and/or confidential business information protected from disclosure by Section 14 of the TSCA, 15 U.S.C. 2613(a); and/or documents submitted with pesticide registration applications and may include CBI under FIFRA section 10, 7 U.S.C. 136h, including scientific studies subject to

the disclosure restrictions of FIFRA section 10(g), 7 U.S.C. 136h(g).

All documents that may be subject to release restrictions under federal law will be designated as “Confidential Information,” “Highly Confidential Information,” and/or “Export Control Information” in the Protective Order (“Case Management Order 4.A”) already filed and publicly available in the AFFF litigation. EPA would only produce such documents in accordance with the Protective Order, which would require that such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to protected status and all CBI has been redacted.

**Authority:** 7 U.S.C. 301 *et seq.*; 15 U.S.C. 2601 *et seq.*; 21 U.S.C. 301 *et seq.*

Dated: June 28, 2021.

**Pamela Myrick,**

*Director, Program Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2021-14117 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK

[Public Notice: 2021-6013]

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Comments should be received on or before August 30, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on <http://www.regulations.gov> or by mail to Mardel West, Export-Import Bank of the United States, 811 Vermont Avenue NW, Washington, DC 20571.

Comments submitted in response to this notice may be made available to the public through the [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV). For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Tiffin Caverly <[tiffin.caverly@exim.gov](mailto:tiffin.caverly@exim.gov)>, 202-565-3564.

**SUPPLEMENTARY INFORMATION:** This collection will provide information needed to determine compliance and creditworthiness for transaction requests involving previously-owned equipment submitted to Ex-Im Bank under its insurance, guarantee, and direct loan programs. Information presented in this form will be considered in the overall evaluation of the transaction, including Export-Import Bank’s determination of the appropriate term for the transaction.

The form can be viewed at: <https://www.exim.gov/sites/default/files/pub/pending/eib11-03.pdf>.

**Titles and Form Number:** EIB 11-03, Used Equipment Questionnaire.

**OMB Number:** 3048-0039.

**Type of Review:** Regular.

**Need and Use:** The information collected will provide information needed to determine compliance and creditworthiness for transaction requests involving previously-owned equipment submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

**Affected Public:** This form affects entities involved in the export of U.S. goods and services.

**Annual Number of Respondents:** 1,000.

**Estimated Time per Respondent:** 15 minutes.

**Annual Burden Hours:** 250 hours.

**Frequency of Reporting or Use:** As needed.

**Government Expenses:**

**Reviewing Time per Year:** 250 hours.

**Average Wages per Hour:** \$42.50.

**Average Cost per Year:** \$10,625 (time\*wages).

**Benefits and Overhead:** 20%.

**Total Government Cost:** \$12,750.

**Bassam Doughman,**  
*IT Specialist.*

[FR Doc. 2021-14015 Filed 6-30-21; 8:45 am]

**BILLING CODE 6690-01-P**

**FARM CREDIT ADMINISTRATION****Sunshine Act Meetings**

**AGENCY:** Farm Credit Administration Board, Farm Credit Administration.

**ACTION:** Notice, regular meeting.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act, of the forthcoming regular meeting of the Farm Credit Administration Board.

**DATES:** The regular meeting of the Board will be held July 8, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID-19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

**ADDRESSES:** To observe the open portion of the virtual meeting, go to *FCA.gov*, select “Newsroom,” then “Events.” There you will find a description of the meeting and a link to “Instructions for board meeting visitors.” See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

**FOR FURTHER INFORMATION CONTACT:** Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883-4009. TTY is (703) 883-4056.

**SUPPLEMENTARY INFORMATION:** Instructions for attending the virtual meeting: This meeting of the Board will be open to the public. If you wish to observe, at least 24 hours before the meeting, go to *FCA.gov*, select “Newsroom,” then “Events.” There you will find a description of the meeting and a link to “Instructions for board meeting visitors.” If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883-4009. The matters to be considered at the meeting are as follows:

**Open Session***Approval of Minutes*

- June 10, 2021

*Reports*

- Data Improvement and FCA Data Priorities
- Cybersecurity—Recent Issues, Risk to FCA and FCS, and Mitigations
- Climate Risk Task Force—Scope and Objective

*New Business*

- Risk-Weighting of High Volatility Commercial Real Estate—Proposed Rule

Dated: June 29, 2021.

**Dale Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2021-14182 Filed 6-29-21; 11:15 am]

**BILLING CODE 6705-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

[DA 21-593; FR ID 33845]

**Alert Reporting System Available for Filing of State Emergency Alert System Plans**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (Commission or FCC) announces that its Alert Reporting System (ARS) is now open for the filing of State Emergency Alert System (EAS) Plans.

**FOR FURTHER INFORMATION CONTACT:**

David Munson, Attorney Advisor, Public Safety and Homeland Security Bureau, at (202) 418-2921, or by email at *David.Munson@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Public Notice (DA 21-593), released May 25, 2021, announcing that the ARS, adopted in the State EAS Plan Order, PS Docket No. 15-94, FCC 18-39, adopted on March 28, 2018, released on April 10, 2018, and published at 83 FR 37750 (August 2, 2018), is now fully operational and available to receive State EAS Plan filings.

The EAS is a national public warning system used by state, local, federal, Tribal and territorial alert originators to deliver emergency alerts to the public. The ARS is an online filing system for the filing of State EAS Plans by State Emergency Communications Committees (SECCs). State EAS Plans must describe state and local EAS operations and contain guidelines that must be followed to activate the EAS.

In the State EAS Plan Order, in addition to adopting the ARS, the Commission amended sections 11.18 and 11.21, 47 CFR 11.18 and 11.21, respectively, of its rules governing EAS designations and State EAS Plan content, and stated that both the electronic submission of State EAS Plans by SECCs using the ARS, and compliance with the amendments adopted to sections 11.18 and 11.21, would be required “within one year of publication in the **Federal Register** of a Public Notice announcing: (i) Office of Management and Budget (OMB) approval of ARS information collection

requirements or (ii) the availability of the ARS to receive such information, whichever is later.”

On July 23, 2019, notice of OMB’s approval of the information collection requirements associated with ARS was published in the **Federal Register**, Federal Communications Commission, Emergency Alert System; Wireless Emergency Alerts, 84 FR 35334 (July 23, 2019). Accordingly, publication of this Notice in the **Federal Register** of ARS’s availability to receive State EAS Plan filings triggers the one-year deadline for (i) electronic submission of State EAS Plans via ARS, and compliance with the amendments to Sections 11.18 and 11.21 adopted in the State EAS Plan Order. Accordingly, electronic submission of State EAS Plans using the ARS, and compliance with the EAS designations at 47 CFR 11.18 and the State EAS Plan content rules at 47 CFR 11.21, will be required on or by July 1, 2022. SECCs may access the ARS at <https://www.fcc.gov/licensing-databases/fcc-user-login>.

For further information about ARS and/or the filing process, please contact David Munson at (202) 418-2921 or *David.Munson@fcc.gov*.

Federal Communications Commission.

**Lisa Fowlkes,**

*Chief, Public Safety and Homeland Security Bureau.*

[FR Doc. 2021-14049 Filed 6-30-21; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

[MB Docket No. 18-349; DA 21-657; FR ID 33524]

**Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Media Bureau of the Federal Communications Commission seeks to update the record in the 2018 Quadrennial Review proceeding, in which the Commission has sought comment, pursuant to its obligation under of the Telecommunications Act of 1996, on whether its media ownership rules remain “necessary in the public interest as the result of competition.”

**DATES:** Comment Date: August 2, 2021. Reply Comment Date: August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ty Bream, Industry Analysis Division,

Media Bureau, [Ty.Bream@fcc.gov](mailto:Ty.Bream@fcc.gov), (202) 418-0644.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau's Public Notice in MB Docket No. 18-349, DA 21-657, that was released June 4, 2021. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/DA-21-656A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.) and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

1. *Introduction.* With this Public Notice, the Media Bureau seeks to update the record in the 2018 Quadrennial Review proceeding, in which the Commission has sought comment, pursuant to its obligation under Section 202(h) of the Telecommunications Act of 1996, on whether its media ownership rules remain "necessary in the public interest as the result of competition." The prior comment and reply comment period in this proceeding closed two years ago. On April 1, 2021, the U.S. Supreme Court issued an opinion in *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150 (2021), reversing a decision of the U.S. Court of Appeals for the Third Circuit, *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019), and restoring the Commission's media ownership rules as adopted in the combined 2010/2014 Quadrennial Review proceeding. Consistent with the Supreme Court's decision, in a separate order, the Media Bureau is reinstating the changes adopted in three orders that were part of, or related to, the 2010/2014 proceeding—the 2018 *Incubator Order* (83 FR 43773, Aug. 28, 2018); the 2017 *Order on Reconsideration* (83 FR 755, Jan. 8, 2018); and the eligible entity definition from the 2016 *Second Report and Order* (81 FR 76262, Nov. 1, 2016). Given the passage of time since the prior comment period ended, as well as the subsequent litigation culminating with the Supreme Court's recent decision, we now seek further comment to update the record in the 2018 Quadrennial Review proceeding.

2. *Background.* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules every four years to determine whether they remain "necessary in the public interest as the result of competition." The Commission reviews these rules to ensure that they continue to serve the core policy goals of competition, localism, and diversity as intended. On December 12, 2018, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to initiate the 2018 Quadrennial Review proceeding and to seek comment on whether to retain, modify, or eliminate any of its structural media ownership rules. See *2018 Quadrennial Review NPRM*, 84 FR 6741 (Feb. 28, 2019). The NPRM also sought comment on several diversity-related proposals offered in the record of the 2010/2014 Quadrennial Review proceeding. As a result of the Supreme Court's decision to restore the changes made in the *Order on Reconsideration*, including the elimination of several rules, three structural ownership rules remain that are subject to the Commission's quadrennial review process. They are the Local Radio Ownership Rule (47 CFR 73.3555(a)), the Local Television Ownership Rule (47 CFR 73.3555(b)), and the Dual Network Rule (47 CFR 73.658(g)). These are the same three structural rules on which the Commission sought comment in the *2018 Quadrennial Review NPRM*.

3. As noted above, the decision of the Supreme Court reversed a prior decision by the Third Circuit, which had vacated and remanded the *Order on Reconsideration* and the *Incubator Order* in their entirety, as well as the eligible entity definition from *Second Report and Order*. In its decision, the Third Circuit found that the Commission failed to consider adequately the effect of its rule changes on ownership by women and minorities. The Commission sought review of that decision by the Third Circuit *en banc*, which was denied on November 20, 2019. The court's mandate issued on November 29, 2019, reinstating the media ownership rules adopted in the *Second Report and Order*. The Media Bureau issued an Order on December 20, 2019 to restore those rules to the Code of Federal Regulations. See 85 FR 5163 (Jan. 29, 2020).

4. The Commission, as well the National Association of Broadcasters, each filed a petition for a writ of certiorari seeking review of the Third Circuit's decision by the Supreme Court. The Court granted the petitions, and on April 1, 2021, the Supreme Court issued an opinion reversing the Third Circuit's

decision and restoring the *Order on Reconsideration*, the *Incubator Order*, and the revenue-based eligible entity definition from the *Second Report and Order*. In doing so, the Court found that the Commission's decision in the 2017 *Order on Reconsideration* to repeal or modify several of its rules was not arbitrary and capricious under the Administrative Procedure Act and that the Commission had reasonably considered the available evidence in concluding that such changes were not likely to harm minority and female ownership. In addition, because the Court reached its decision based on other grounds, the Court did not reach arguments from industry petitioners that Section 202(h) bars the Commission from considering minority and female ownership as part of its quadrennial review.

5. Contemporaneously with this Public Notice and consistent with the Supreme Court's decision, the Media Bureau, in a separate order, is reinstating the changes adopted in the *Order on Reconsideration* and the *Incubator Order* as well as the eligible entity definition adopted in the *Second Report and Order*. As the order sets forth, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Television Joint Sales Agreement Attribution Rule are eliminated, and the Local Television Ownership Rule and Local Radio Ownership Rule are reinstated as adopted in the *Order on Reconsideration*. In addition, the eligible entity standard and its application to regulatory measures as set forth in the *Second Report and Order* are reinstated, as are the regulatory measures adopted in the *Incubator Order*.

6. *Discussion.* With this Public Notice, we open a new comment window, specifically to encourage the submission of new or additional information to update the record in the 2018 Quadrennial Review proceeding. As noted above, the formal comment and reply period in this proceeding closed two years ago. Nonetheless, as evident from the docket in this proceeding, the 2018 Quadrennial Review proceeding has generated, and continues to generate, significant interest, including through the submission of additional information even after the initial comment period has ended. Accordingly, we ask commenters to take this opportunity to update the record in the 2018 Quadrennial Review proceeding, including with regard to the diversity-related proposals cited therein. Specifically, the diversity-related proposals mentioned in the 2018

*Quadrennial Review NPRM* include extending cable procurement requirements to broadcasters, adopting rules aimed at creating media ownership limits that promote diversity, and developing a model for market-based, tradeable “diversity credits” to serve as an alternative method for setting ownership limits.

7. We seek comment, first, on materials that have been filed in the docket of this proceeding since the formal comment and reply period ended in May 2019. To the extent they have not already done so, commenters are invited to review these materials and the issues they raise and comment on them as they feel is appropriate. In particular, we seek comment on whether these materials, either individually or collectively, highlight any issues, including issues that may not have been fully explored by the *2018 Quadrennial Review NPRM*, that commenters believe now warrant further comment and consideration. Moreover, are there issues raised in the *2018 Quadrennial Review NPRM*, or in the record in response to that NPRM, for which new and relevant information has come to light? Commenters are strongly encouraged at this stage to provide detailed analysis, empirical evidence, and/or specific proposals that the Commission should consider in relation to such issues. In so doing, commenters should explain how such analysis, evidence, or proposals relate to the Commission’s interest in ensuring that its rules continue to promote the goals of competition, localism, and diversity.

8. Beyond reviewing the existing record in light of the passage of time, we also seek submission of new or additional information regarding the media marketplace that commenters believe is relevant to this proceeding. Specifically, we seek information regarding the broadcast industry’s evolution since early 2019 and its current trajectory, including the effects, if any, of technological change, new entry, consolidation, or changing market conditions. We seek comment in particular on the further development and impact of technological advances and industry practices. In the *2018 Quadrennial Review NPRM*, the Commission sought comment on whether and, if so how, it should account for multicast streams, satellite stations, or low power television stations for purposes of the Local Television Ownership Rule. How should the increased use of these platforms, and other innovations, such as the continued deployment and use of the ATSC 3.0 transmission standard by the broadcast television industry,

inform our review? What implications, if any, do these or other developments have for the Commission’s broadcast ownership rules or its core policy goals of competition, localism, and viewpoint diversity, which support those rules? Have recent industry developments altered the incentives or behavior of any market participants in ways that are relevant to this proceeding?

9. Similarly, we seek comment on any other relevant trends that have been, or are being, observed within the broadcast industry or in related markets. Among other things, the *2018 Quadrennial Review NPRM* noted the growth of online audio and video sources, including as sources for news and information, as well as the continued strength and importance of broadcast radio and television stations in the local communities they serve. To what extent, if at all, have trends such as these (or others) continued, accelerated, flattened, or reversed in recent years, such that the Commission should take account of any new or continuing trendlines in the current proceeding? What do these trends indicate with respect to consumers’ relative reliance on various sources for local news and information, and is there any difference in this respect between local and national news and information? Are there recent trends regarding broadcast industry ratings or revenues, including advertising, retransmission consent, and online revenues, that are relevant to this proceeding? In what ways will such trends impact the evolution and the viability of the broadcast industry? Are there other industry events or trends that have not previously been described or fully explored in this proceeding that may be relevant to the Commission? The *2018 Quadrennial Review NPRM*, for example, notes the importance of the internet as a means to access audio and video content today. In this regard, commenters should distinguish between internet sources (*e.g.*, websites, mobile applications, social media accounts) that are independent of, as opposed to those that are affiliated with, broadcast stations (*e.g.*, television station websites). How, if at all, should the Commission consider recent trends regarding access to, or usage of, broadband internet service or other technologies in conjunction with the media ownership rules?

10. We note that the *2018 Quadrennial Review NPRM* sought comment on the impact, if any, of the 2017 completion of the Incentive Auction and the repack of the spectrum band on the Local Television Ownership Rule. Shortly after the release of the *2018 Quadrennial Review*

*NPRM*, the Commission reported that several dozen stations had discontinued operations while the vast majority of winning bidders chose instead to remain on the air through channel sharing arrangements. How, if at all, has the Incentive Auction and its aftermath affected the broadcast industry?

11. In considering market trends since the comment period ended in May 2019, we seek comment specifically on the impact of the COVID–19 pandemic on this proceeding. For example, the Commission’s most recent Communications Marketplace Report (released on December 31, 2020) discusses some possible effects of the COVID–19 pandemic on the broadcast radio and television industries, most notably through decreased advertising revenue. The report, however, also notes that, despite MVPD subscriber declines, “retransmission consent revenue earned by major station groups increased in both the first and second quarters of 2020 by nearly 20% compared to the first and second quarters of 2019,” suggesting that retransmission consent revenues for television stations “have not been meaningfully affected by the COVID–19 pandemic.” To what extent, if at all, should the Commission consider, in this proceeding, changes to, or effects on, the broadcast radio and television industries as a result of the COVID–19 pandemic? What are those changes or effects? Which, if any, should be considered temporary in nature and which could be expected to have a lasting impact? What implications, if any, do they have for the Commission’s broadcast ownership rules?

12. In addition to identifying and describing developments and trends, we also ask commenters to tell us whether there is any further empirical evidence the Commission should consider. For instance, are there any new or additional data that are now available, or studies that have been published or performed, that would inform the Commission’s analysis? If so, we encourage commenters to submit copies of such data or studies in the docket of this proceeding (to the extent they have not already done so) and urge commenters to provide any interpretations, analyses, and conclusions based on such materials. In particular, we welcome any insights or analysis of research regarding how to further the Commission’s policy goals and whether such research suggests any specific rule changes. If so, in what ways do the data or other information support such changes? We encourage commenters to draw any such conclusions or connections between the

data and potential policy or rule changes as tightly and as explicitly as possible. Where possible, we also encourage commenters to quantify and explain the benefits or costs associated with any policy or rule they discuss or, in the alternative, to explain the difficulties faced in trying to quantify benefits and costs in this context and how the Commission might nonetheless evaluate them in the absence of extensive or conclusive objective metrics. Moreover, in addition to identifying, analyzing, and submitting existing materials, we welcome commenters to take this opportunity to compile data or conduct further research that can be submitted to the Commission during the new comment window.

13. Finally, we seek comment on whether there are any other legal or economic factors, changes, or issues that the Commission should consider in the context of this quadrennial review and, if so, how the Commission should evaluate or address them.

14. *Initial Regulatory Flexibility Analysis.* The NPRM included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. We invite parties to file comments on the IRFA in light of this request to refresh the record.

15. *Ex Parte Rules—Permit But Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200 *et seq.*). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing

them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

16. *Filing Comments and Replies.* All filings must be submitted in MB Docket No. 18–349. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

17. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

18. *Additional Information.* For additional information on this proceeding, please contact Ty Bream of the Media Bureau, Industry Analysis Division, [Ty.Bream@fcc.gov](mailto:Ty.Bream@fcc.gov), (202) 418–0644.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

[FR Doc. 2021–14079 Filed 6–30–21; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, July 13, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on July 15, 2021.

**PLACE:** 1050 First Street NE, Washington, DC (this meeting will be a virtual meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

\* \* \* \* \*

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer. Telephone: (202) 694–1220.

**Vicktorija J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2021–14237 Filed 6–29–21; 4:15 pm]

BILLING CODE 6715–01–P

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the



Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than July 16, 2021.

*A. Federal Reserve Bank of St. Louis* (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166-2034.

Comments can also be sent electronically to

[Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org):

1. *Steuart L. Walton, Thomas L. Walton, Alice A. Proietti, and James M. Walton, all of Bentonville, Arkansas*; to become members of the Walton Family Group, a group acting in concert to retain voting shares of Arvest Bank Group, Inc., Bentonville, Arkansas, and thereby indirectly retain voting shares of Arvest Bank, Fayetteville, Arkansas.

Board of Governors of the Federal Reserve System, June 28, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-14126 Filed 6-30-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Meeting of the National Advisory Council for Healthcare Research and Quality

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

**DATES:** The meeting will be held on Wednesday, July 14, 2021, from 10:00 a.m. to 2:30 p.m.

**ADDRESSES:** The meeting will be held virtually.

#### FOR FURTHER INFORMATION CONTACT:

Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427-1456. For press-related information, please contact Bruce Seeman at (301) 427-1998 or [Bruce.Seeman@AHRQ.hhs.gov](mailto:Bruce.Seeman@AHRQ.hhs.gov).

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827-4840, no later than Friday, July 2, 2021. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427-1128.

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

##### II. Agenda

On Wednesday, July 14, 2021, the Council meeting will convene at 10:00 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting will begin with an update on AHRQ's recent accomplishments in Health Systems Research, Practice Improvement, and Data and Analytics. The agenda will also include discussions on Strategic Opportunities for FY22, Opportunities to Advance

Telehealth and Advancing Patient Safety. The meeting will adjourn at 2:30 p.m. The meeting is open to the public. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to <https://www.ahrq.gov/news/events/nac/>. The final agenda will be available on the AHRQ website no later than Wednesday, July 7, 2021.

Dated: June 25, 2021.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021-14010 Filed 6-30-21; 8:45 am]

**BILLING CODE 4160-90-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket No. CDC-2021-0060]

#### Advisory Committee on Immunization Practices (ACIP); Cancellation of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); June 18, 2021, 11:00 a.m. to 5:00 p.m., EDT (dates and times subject to change), in the original FRN.

The virtual meeting was published in the **Federal Register** on June 15, 2021, Volume 86, Number 113, pages 31716-31717.

Due to the Federal holiday on June 18, 2021, the ACIP meeting has been canceled in its entirety. In addition, the previously scheduled June 18, 2021 agenda items will be discussed at the ACIP meeting on June 23-25, 2021. Additionally, public comments submitted to docket number CDC-2021-0060 will be shared with ACIP members at or prior to the June 23-25, 2021 meeting.

#### FOR FURTHER INFORMATION CONTACT:

Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS-H24-8, Atlanta, Georgia 30329-4027; Telephone: (404) 639-8367; Email: [ACIP@cdc.gov](mailto:ACIP@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021-14007 Filed 6-30-21; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Healthcare Infection Control Practices Advisory Committee (HICPAC) Meeting**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This virtual meeting is open to the public, limited only by audio and web conference lines (300 audio and web conference lines are available). Registration is required. To register for this web conference, please go to: [www.cdc.gov/hicpac](http://www.cdc.gov/hicpac). All registered participants will receive the meeting link and instructions shortly before the meeting.

**DATES:** The meeting will be held on August 19, 2021, from 12:00 p.m. to 2:00 p.m., EDT.

**ADDRESSES:** Please click the link below to join the webinar: <https://cdc.zoomgov.com/j/1612908106?pwd=M0xTVVWxmUTRtZXhuOVBzWmsybFZxZz09>.

Meeting ID: 161 290 8106

Passcode: yq!BLL44

Dial-in Lines:

+1-669-254-5252 (San Jose)

+1-646-828-7666 (New York)

Meeting ID: 161 290 8106

Telephone Passcode: 47632330.

**FOR FURTHER INFORMATION CONTACT:** Koo-Whang Chung, M.P.H., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16-3, Atlanta, Georgia 30329-4027; Telephone: (404) 498-0730; Email: [HICPAC@cdc.gov](mailto:HICPAC@cdc.gov).

**SUPPLEMENTARY INFORMATION:**

**Purpose:** The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion (DHQP), the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID),

the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

**Matters To Be Considered:** The agenda will include the following updates: The Healthcare Personnel Guideline Workgroup; the Isolation Precautions Guideline Workgroup; and the Neonatal Intensive Care Unit Workgroup. Agenda items are subject to change as priorities dictate.

**Procedures for Public Comment:** Time will be available for public comment. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments.

**Procedures for Written Comment:** The public may submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed above. The deadline for receipt of written public comment is July 26, 2021. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length. Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021-14008 Filed 6-30-21; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10516]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by *August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Title of Information Collection:* Program Integrity II; *Type of Information Collection Request:* Extension of a currently approved collection; *Use:* On June 19, 2013, HHS published proposed rule CMS–9957–P: Program Integrity: Exchanges, SHOP, Premium Stabilization Programs, and Market Standards (78 FR 37302) (Program Integrity Proposed Rule) which, among other things, contained third party disclosure requirements and data collections that supported the oversight of premium stabilization programs, State Exchanges, and qualified health plan (QHP) issuers in Federally Facilitated Exchanges (FFE). Parts of the proposed rule were finalized as Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule (Program Integrity Final Rule II), 78 FR 25326 (October 24, 2013). This ICR relates to a portion of the information collection request (ICR) requirements set forth in the final rule. *Form Number:* CMS–10516 (OMB control number: 0938–1277; *Frequency:* Annually; *Affected Public:* Private Sector, State, Business, and Not-for Profits; *Number of Respondents:* 428; *Number of Responses:* 428; *Total Annual Hours:* 40,420. (For questions regarding this collection, contact Joshua Van Drei at 410-786-1659.)

Dated: June 25, 2021.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–14028 Filed 6–30–21; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier CMS–10561]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by August 30, 2021.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: \_\_\_\_\_, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. *Access CMS’ website address at* <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

#### SUPPLEMENTARY INFORMATION:

##### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection’s supporting statement and associated materials (see **ADDRESSES**).

CMS–10561 Essential Community Provider Data Collection to Support QHP Certification for PYs 2022–2024

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

##### Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Essential Community Provider Data Collection to Support QHP Certification for PYs 2022–2024; *Use:* Standards for Essential Community Provider (ECP) requirements are codified at 45 CFR 156.235. Issuers must contract with a certain percentage, as determined by

HHS, of the available ECPs in the plan's service area. For plan years 2022–2024, Health and Human Services (HHS) will continue to solicit qualified ECPs to complete and submit the HHS ECP provider petition in order to be added to the HHS ECP list, or update required data fields to 2 remain on the list, resulting in a more robust and accurate listing of the universe of available ECPs from which issuers select to satisfy the ECP standard. HHS will continue to collect such data directly from providers through the online ECP provider petition. *Form Number:* CMS–10561 (OMB control number: 0938–1295); *Frequency:* Annually; *Affected Public:* Private sector, Business or other for-profits, and Not-for-profit Institutions; *Number of Respondents:* 12,408; *Number of Responses:* 12,408; *Total Annual Hours:* 3,140. For questions regarding this collection, contact Deborah Hunter at 443–386–3651.

Dated: June 25, 2021.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–14027 Filed 6–30–21; 8:45 am]

**BILLING CODE 4120–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

[Document Identifier: OS–0990–new]

**Agency Information Collection Request: 60-Day Public Comment Request**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before August 30, 2021.

**ADDRESSES:** Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

**FOR FURTHER INFORMATION CONTACT:** When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov*, or call (202) 795–7714 the Reports Clearance Officer.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* National Survey on Menstrual Products.

*Type of Collection:* New Collection.

OMB No. 0990–NEW—Office of the Assistant Secretary for Health—Office on Women's Health.

*Abstract:* The Office on Women's Health (OWH) in the U.S. Department of Health and Human Services (HHS) is proposing a data collection activity for four months, beginning in December 2021 or January 2022. The objective of the federal data collection is to document the usage of, type, preference, cost and frequency of use for different menstrual products among women. The survey will collect information on the preferences of menstrual products among adult women (over age 18) of reproductive age in the United States. The proposed collection will include an online survey of women ages 18–50 years who still experience menstrual cycles.

The data collection efforts will provide information on access and barriers to adequate menstrual products among women of all income levels, racial, ethnic, language and cultural backgrounds in diverse geographic areas within the U.S. The proposed survey will identify preferences regarding menstrual products for women; describe their demographic and socioeconomic status, and preferences; describe their usage; identify their special needs; identify the gaps in products available to them; and identify barriers to adequate menstrual products. OWH will share information gleaned from this study with policymakers, Congress, general media and HHS program staff to inform future initiatives and policies regarding menstrual health.

**ANNUALIZED BURDEN HOUR TABLE**

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response (minutes)	Total burden hours
Menstrual Products Survey .....	Women between the ages of 18–50	500	1	15	125
Total .....	.....	.....	1	.....	125

**Sherrette A. Funn,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2021–14030 Filed 6–30–21; 8:45 am]

**BILLING CODE 4150–33–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Advisory Committee on Individuals With Disabilities and Disasters: Establishment; Correction**

**AGENCY:** Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

**ACTION:** Notice; correction.

**SUMMARY:** The Office of the Secretary has extended the application period for

accepting application submissions from qualified individuals who wish to be considered for membership on the National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD). Up to seven new voting members with expertise disability accessibility, medical disaster planning, preparedness, response, or recovery will be selected for the Committee. Please visit the NACIDD website at [www.phe.gov/nacidd](http://www.phe.gov/nacidd) for all application submission information and

instructions. Application submissions will be accepted until July 12, 2021.

**DATES:** The application period has been extended and will now end on July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Maxine Kellman, DVM, Ph.D., PMP, Designated Federal Official for National Advisory Committees, Washington, DC, Office (202) 260-0447 or email [maxine.kellman@hhs.gov](mailto:maxine.kellman@hhs.gov).

**Corrections**

1. Correction to final notice published in the **Federal Register** on May 13, 2021 entitled “National Advisory Committee on Individuals with Disabilities and Disasters.”

Amendment to the application period which has been extended and applications will be accepted until July 12, 2021.

**Karuna Seshasai,**

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

[FR Doc. 2021-14059 Filed 6-30-21; 8:45 am]

**BILLING CODE 4150-37-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Advisory Committee on Seniors and Disasters: Establishment**

**AGENCY:** Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

**ACTION:** Notice; correction.

**SUMMARY:** The Office of the Secretary has extended the application period for accepting application submissions from qualified individuals who wish to be considered for membership on the National Advisory Committee on Seniors and Disasters (NACSD). Up to seven new voting members with expertise in senior medical disaster planning, preparedness, response, or recovery will be selected for the Committee. Please visit the NACSD website at [www.phe.gov/nacsd](http://www.phe.gov/nacsd) for all application submission information and instructions. Application submissions will be accepted until July 12, 2021.

*Application Period:* The application period has been extended and will now end on July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Maxine Kellman, DVM, Ph.D., PMP, Designated Federal Official for National Advisory Committees, Washington, DC, Office (202) 260-0447 or email [maxine.kellman@hhs.gov](mailto:maxine.kellman@hhs.gov).

*Corrections:*

1. Correction to final notice published in the **Federal Register** on May 13, 2021

entitled “National Advisory Committee on Seniors and Disasters.”

Amendment to the application period which has been extended and applications will be accepted until July 12, 2021.

**Karuna Seshasai,**

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

[FR Doc. 2021-14053 Filed 6-30-21; 8:45 am]

**BILLING CODE 4150-37-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Request for Information on Drinking Water Contaminants of Emerging Concern for the National Emerging Contaminant Research Initiative; Reopening of Comment Period**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** The Department of Health and Human Services (HHS), National Institutes of Health (NIH), National Institute of Environmental Health Sciences (NIEHS), on behalf of the Office of Science and Technology Policy (OSTP), published a Notice in the **Federal Register** on May 25, 2021, requesting input from all interested parties on research needed to identify, analyze, monitor, and mitigate drinking water contaminants of emerging concern (DW CECs). Comments provided through this Request for Information (RFI) will inform the development of a National Emerging Contaminant Research Initiative (NECRI). The NECRI will be the precursor to Federal coordination of DW CEC research; and agencies will publish external grant solicitations that align with the goals of the NECRI. The purpose of this Notice is to provide a reopening of the comment period for an additional 30 days to provide more time to receive comments by interested parties.

**DATES:** This Request for Information has been reopened for public comment for 30 days. Responses must be received by August 2, 2021 to ensure consideration.

**ADDRESSES:** Responses to this RFI may be submitted online to [NIEHSCEC@nih.gov](mailto:NIEHSCEC@nih.gov). Email submissions should be machine-readable [PDF, Word] and should not be copy-protected.

Submissions should include “RFI Response: Drinking Water Contaminants of Emerging Concern” in the subject line of the email.

Response to this RFI is voluntary. Each individual or organization is requested to submit only one response. Please feel free to respond to one or as many statements as you choose. Responses must not exceed 10 pages in 12 point or larger font (exclusive of attachments), with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the response.

Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this RFI are subject to the Freedom of Information Act (FOIA). Responses to this RFI may also be posted, without change, on a Federal website. Therefore, we request that any proprietary information, copyrighted information, or personally identifiable information be omitted from your response to this RFI.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government’s use. Additionally, the government cannot guarantee the confidentiality of the information provided.

**FOR FURTHER INFORMATION CONTACT:**

Questions about this request for information should be directed to Christopher P. Weis, Ph.D., DABT, National Institute of Environmental Health Sciences (NIEHS), Telephone: 301-496-3512, Email: [Christopher.Weis@nih.gov](mailto:Christopher.Weis@nih.gov); or David M. Balshaw, National Institute of Environmental Health Sciences (NIEHS), Telephone: 984-287-3234, Email: [balshaw@niehs.nih.gov](mailto:balshaw@niehs.nih.gov).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS), National Institutes of Health (NIH), National Institute of Environmental Health Sciences (NIEHS), on behalf of the Office of Science and Technology Policy (OSTP), published a Notice in the **Federal Register** on May 25, 2021, pages (28120-28121), 86 FR 28120, requesting input from all interested parties on research needed to identify, analyze, monitor, and mitigate drinking water contaminants of emerging concern (DW

CECs). In accordance with 42 U.S.C. 2851, of the Public Health Service Act, as amended, NIEHS is reopening the comment period for 30 days to allow additional time to receive comments by interested parties. Drinking water contaminants of emerging concern (DW CECs) are newly identified or re-emerging manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials that may cause adverse effects to human health or the environment and do not currently have a national primary drinking water regulation. Through this RFI, NIH/NIEHS seeks input from non-governmental entities (e.g., industry, academia, civil society), State and local governments, and other institutions with scientific and material interest in DW CEC research. Comments provided in response to this RFI will inform the development of a National Emerging Contaminant Research Initiative (NECRI) for protection of U.S. drinking water quality. Responses may also be used to address requests from the 2021 National Defense Authorization Act to identify research questions and priorities in the area of sustainable chemistry. The initiative will build on the National Science and Technology Council's (NSTC) cross-agency Plan for Addressing Critical Research Gaps Related to Emerging Contaminants in Drinking Water published in 2018. The NECRI will be the precursor to Federal coordination of DW CEC research; and, in compliance with the NDAA for Fiscal Year 2020, Title LXXIII, Subtitle D, Sections 7341 and 7342, agencies will "issue a solicitation for research proposals consistent with the Federal research strategy and that agency's mission."

Contaminants of emerging concern may be present in drinking water and in some cases have been shown to cause adverse effects on human health. The 2020 NDAA instructed Office of Science and Technology Policy (OSTP) to establish the NECRI to improve the "identification, analysis, monitoring, and treatment methods of contaminants of emerging concern" and subsequently develop "any necessary program, policy, or budget" to further DW CEC research. The 2020 NDAA also directs the Administrator of the U.S. Environmental Protection Agency (EPA) and the Secretary of Health and Human Services (HHS) to establish an Interagency Working Group on Contaminants of Emerging Concern (CEC IWG) to facilitate coordination of Federal research on CEC. OSTP collaborated with the CEC IWG to identify approaches, tools, and methods

to accelerate DW CEC research, and metrics and indicators to assess progress in reaching the goals of the NECRI.

#### Information Requested

This RFI requests feedback on two sections: The need for coordination of efforts and the scientific focus of a DW CEC effort. Respondents are free to address one or both of the sections listed below and respond to as many items in each section as they choose, while remaining within the 10-page limit, exclusive of attachments.

*Section 1—Feedback on Improving and Coordinating DW CEC Efforts:* This RFI requests feedback on methods to focus and coordinate DW CEC research efforts. Please consider how U.S. Government and external stakeholder action could contribute to DW CEC research, take advantage of emerging science and technology opportunities, measure outcomes, and develop a DW CEC research initiative with the goal to provide safe drinking water for the American people. Please comment on:

1. Barriers that prevent or limit you or your organization's DW CEC research capabilities and success.

2. Potential opportunities to improve coordination and partnership among public and private entities participating in DW CEC research and prevent unnecessarily duplicative efforts.

3. The types of outreach efforts most useful to communicate DW CEC research results for impacted Federal, State, local, and Tribal communities. Please provide examples where possible.

4. Metrics or indicators that you or your organization adopted to measure the success of your DW CEC research or other related research efforts.

5. Metrics or indicators that would be valuable in measuring the success of a National DW CEC research initiative.

6. As an affected community member, the most significant concerns and recommendations for DW CECs.

*Section 2—Feedback on DW CEC Research Areas:* This RFI requests feedback on needs for broad areas of DW CEC research (detailed below) and research needed for shaping the NECRI.

#### DW CEC Research Areas

Below are descriptions of four areas of DW CEC research identified by the CEC IWG. When submitting your feedback, please indicate which DW CEC research area(s) you are responding to.

##### Research Area 1: Exposure

Exposure to DW CECs can occur through ingestion, inhalation, or dermal routes. Exposure-related research includes contaminant identification and

monitoring from source-to-tap and informs downstream efforts to understand the biological effects of CEC exposures, characterize their risk, and develop mitigation tools. Monitoring can be performed routinely to assess water composition, during acute exposure events, or to estimate the effect of CEC mitigation efforts. Exposure science includes efforts to estimate the type and concentration of contaminants through a range of activities from targeted analysis of specific CEC, non-targeted analysis for the discovery of unknown CEC, and modeling activities. Please include thoughts on identification and measurement tools, such as sensors, to conduct analyses.

##### Research Area 2: Human Health and Environmental Effects

Emerging contaminants may cause adverse effects on human health and the environment. Biological effects research encompasses the identification and characterization of these adverse effects, including factors that influence susceptibility to disease or dysfunction. Research tools may include *in-silico* and receptor-based approaches, predictive modeling, new toxicological assessments, and data analytics strategies. In the context of this research initiative, environmental effects research considers indicators of adverse human health effects.

##### Research Area 3: Risk Characterization To Inform Risk Mitigation

Risk characterization synthesizes available information and communicates uncertainty about exposure, biological effects, and other relevant considerations to inform risk mitigation actions. Risk mitigation actions include research into preventative approaches such as source reduction. Sustainable chemistry efforts may also fall into risk mitigation actions. In addition, treatments, technological development and application, and other interventions may also be considered to reduce or otherwise mitigate risk for individual, mixtures, or classes of CEC.

##### Research Area 4: Risk Communication

Risk communication relays information to relevant groups about risks to human health and actions that could address those risks. The scope of relevant groups includes those affected by exposures, the general public, decision makers, scientists, industry, and other technical experts. Risk communication research includes techniques and media formats used to inform stakeholder groups and studies on the psychosocial aspects of risks,

such as general perceptions of risk, the adoption of risk reduction behaviors, and perceptions framed by scientific controversy or misinformation.

The following statements are provided to obtain feedback to fill existing gaps in DW CEC knowledge and practice in these research areas. Please comment on:

1. The critical, impactful research questions and topics that should be addressed in order to better protect American public health in regard to DW CEC.

2. Research priorities within each of the four areas described below.

3. New or innovative tools, technologies, software, modeling, methods, data/information sharing, etc. that should be developed or employed to address these research areas.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government's use.

Additionally, the government cannot guarantee the confidentiality of the information provided.

Dated: June 28, 2021.

**Christopher P. Weis,**

*Toxicology Liaison, National Institute of Environmental Health Sciences, National Institutes of Health.*

[FR Doc. 2021-14150 Filed 6-30-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Request for Information: Inviting Comments To Inform the Women's Health Consensus Conference (WHCC)

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Request for information.

**SUMMARY:** The National Institutes of Health (NIH) Office of Research on Women's Health (ORWH) is planning a Women's Health Consensus Conference (WHCC) in October 2021, in response to a Congressional request to address NIH research efforts related to women's health research as well as the following specific conditions, rising maternal morbidity and mortality rates, increasing rates of chronic debilitating conditions in women, and stagnant cervical cancer survival rates. The ORWH is seeking comments and

testimonies from the extramural scientific community, professional societies, and the general public regarding the topics mentioned above to assist with identifying research gaps, pitfalls in clinical practices, and obtaining real-life testimonial experiences (direct or indirect) caused by any or all of the listed public health issues.

**DATES:** The Women's Health Consensus Conference (WHCC) Request for Information is open for public comment through September 15, 2021. Comments must be received by September 15, 2021, to ensure consideration.

Comments received after the public comment period has closed may be considered by the Office of Research on Women's Health.

**ADDRESSES:** Submissions must be sent electronically to Elizabeth Barr, Ph.D., [WHCC@od.nih.gov](mailto:WHCC@od.nih.gov).

**FOR FURTHER INFORMATION CONTACT:**

Questions about this request for information should be directed to Elizabeth Barr, Ph.D., Office of Research on Women's Health, 6707 Democracy Boulevard, Suite 400, Bethesda, MD 20817, [WHCC@od.nih.gov](mailto:WHCC@od.nih.gov), 301-402-7895.

**SUPPLEMENTARY INFORMATION:** ORWH was established at NIH on September 10, 1990. The Office was reaffirmed by statute in congressional legislation by the NIH Revitalization Act of 1993 (Pub. L. 103-43, Section 486) to serve as the focal point for women's health research at NIH, reporting directly to the NIH Director, and working in a collaborative partnership with the Institutes, Centers, and Offices. ORWH is convening the Women's Health Consensus Conference in response to significant items (SI) in H.R. 7614—Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (2021). The SIs require that a consensus forum assessing research on the health of women be held by the fall of 2021.

*Goals and Requirements.* Both the House and Senate directed NIH to evaluate research underway related to women's health and provide an update on priority areas for additional study to advance women's health research, including reproductive sciences. In preparation for the WHCC, ORWH, and partners from other NIH Institutes, Centers, and Offices will assess the current state of NIH-supported women's health research; delineate research gaps and, in turn, opportunities related to research on the health of women; and set contemporary priorities for research on the health of women. The following specific topics, among others, will be

addressed: Maternal morbidity and mortality,<sup>1,2</sup> the rising rates of chronic debilitating conditions in women<sup>3</sup> and stagnant cervical cancer survival rates.<sup>4</sup> To inform the WHCC meeting and discussion, ORWH seeks comment and testimony on current research efforts on the health of women.

#### 1. Maternal Morbidity and Mortality

Birthing people in the United States are dying during the postnatal period from conditions that can be treated, such as cardiovascular disease, hypertension, thrombotic pulmonary embolism, and hemorrhage, among others. An estimated six in ten maternal deaths are preventable.<sup>5</sup> The public health challenge is to reduce U.S. maternal mortality rates (17.2 per 100,000 live births in 2011–15)<sup>6</sup> to be comparable with or lower than other first world countries such as United Kingdom, Germany, France, and Canada (rates all below 9.2 per 100,000 live births in 2015).<sup>7</sup>

Individual, behavioral, and structural factors influence incidence of maternal morbidity and mortality.<sup>5</sup> Structural racism,<sup>5</sup> implicit bias,<sup>6</sup> & racially biased policies and practices<sup>7</sup> contribute to significant and persistent racial disparities in maternal morbidity and mortality. From 2011–2015 non-Hispanic Black and American Indian/Alaska Native women had the highest incidences of pregnancy-related deaths. Black women are three times more likely to die from a pregnancy-related cause than White women,<sup>6</sup> in New York City, Black women are twelve times more likely than White women to die from pregnancy-related causes.<sup>8</sup> Similar racial disparities exist in maternal morbidity.<sup>9</sup> Neither education nor higher socioeconomic status mitigates the elevated risks of severe maternal morbidity and maternal mortality among Black women.

#### 2. Chronic Debilitating Conditions in Women

Chronic Debilitating Conditions include diseases that occur in both men and women such as diabetes, cardiovascular disease, cancer, and autoimmune diseases as well as sex-specific conditions such as fibroids and endometriosis. In the United States, six in ten adults have a chronic disease; chronic disease is the leading cause of death and disabilities.<sup>10</sup>

Rates of many chronic diseases in women are rising, for example COPD in women,<sup>11</sup> and new discoveries related to sex-difference and molecular mechanisms of disease are being published every day.<sup>12</sup> Biomedical and socio-behavioral understandings of sex



and gender influences on mechanisms and outcomes of chronic diseases are incomplete, reducing the specificity, sensitivity, and efficacy of diagnostic tests and treatments for women. Research on rare diseases that are more prevalent in women or only occur in women faces similar challenges.

### 3. Stagnant Cervical Cancer Survival Rates

In the United States it is estimated approximately 12,000 new cases of cervical cancer occur each year. Human papillomavirus (HPV) is the cause of cervical cancer as well as a large percentage of cancers of the vulva, vagina, penis, anus, rectum, and oropharynx.<sup>13</sup> Despite cancer prevention efforts through HPV vaccination and cervical cancer screening, incidence and mortality from this malignancy have been stable for the last two decades. Communities historically under-represented in medicine are disproportionately burdened by this disease. The incidence rate of cervical cancer is 30 percent higher in Black women<sup>14</sup> and Black women persistently present at later stages at diagnosis.<sup>15</sup> The overall 5-year relative survival rate for cervical cancer among Black women is 56 percent, compared with 68 percent among White women.<sup>14</sup>

### Information Requested

This Request for Information (RFI) invites the scientific community, health professionals, professional societies, and the general public to provide comments and testimonies on research gaps, pitfalls in clinical practices, and obtaining real-life testimonial experiences (direct or indirect) related to any or all of the listed public health issues. Responses are welcome from associations and professional organizations as well as individuals.

This RFI is for planning purposes only and should not be construed as a solicitation or an obligation on the federal government, the National Institutes of Health, or individual NIH Institutes or Centers. Responses to this RFI Notice are voluntary. The NIH will use the information submitted in response to this RFI at its discretion. NIH will analyze the information submitted and may share it internally or in reports. The information may or may not be reflected in future solicitations, as appropriate and at the government's discretion. NIH advises respondents the government is under no obligation to acknowledge receipt of the information provided and will not provide feedback to respondents. The federal government will not pay for the preparation of any

information submitted or for the government's use. NIH will not consider submitted information confidential. Additionally, the government cannot guarantee the confidentiality of the information provided.

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Dated: June 25, 2021.

**Lawrence A. Tabak,**

*Principal Deputy Director, National Institutes of Health.*

[FR Doc. 2021-14151 Filed 6-30-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** David Yang at 240-695-6406 or [yangp3@mail.nih.gov](mailto:yangp3@mail.nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

### Pre-Biotic Formulation of Topical Chemicals for Use on Human Skin

*Description of Technology:* Atopic dermatitis (AD) is a common, recurrent, chronic inflammatory skin disease that is a cause of considerable economic and social burden. It is one of the most prevalent skin disorders, affecting ~25% of children in developed and developing countries and is expected to continue to escalate. This increased rate of incidence has changed the focus of research on AD toward epidemiology, prevention, and treatment.

Scientists at NIAID have developed novel topical formulations that promote the growth of health-associated strains of commensal bacteria and inhibit disease-associated bacteria, thereby enhancing skin health.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

*Potential Commercial Applications:*

- Over-the-counter formulations—this invention could be readily incorporated into popular body lotions or other skincare products to make “enhanced”/“microbiome-friendly” versions that promote the growth of health associated bacterial

*Competitive Advantages:*

- Benign safety profile with multiple mechanisms of action
- Proven enhancement of beneficial microbiota
- Can be readily incorporated into existing products

*Development Stage:*

- Pre-clinical

*Inventors:* Carlos Castillo and Ian Myles, MD, MPH, both of NIAID.

*Publications:* Castillo, Carlos, et al. “Assessing the effects of common topical exposures on skin bacteria associated with atopic dermatitis”, *Skin Health and Disease*, 2021.05.07.

*Intellectual Property:* HHS Reference No. E-100-2021-0; US provisional application No. 63/175,368 filed on April 15, 2021.

*Licensing Contact:* To license this technology, please contact David Yang at 240-695-6406 or [yangp3@mail.nih.gov](mailto:yangp3@mail.nih.gov) and reference E-100-2021-0.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact David Yang at 240-695-6406 or [yangp3@mail.nih.gov](mailto:yangp3@mail.nih.gov).

Dated: June 24, 2021.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2021-14129 Filed 6-30-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive License, Inter-Institutional Agreement-Institution Lead: Biomarkers and Immunogenic Compositions for Filarial Parasites

**AGENCY:** National Institutes of Health, National Institute of Allergy and Infectious Diseases, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive, sublicensable patent license to New York Blood Center, Inc. (“NYBC”), located in New York, New York, in its rights to the technologies and patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Only written comments and/or applications for a license which are received by the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, on or before July 16, 2021 will be considered.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive License should be directed to: Theodoric Mattes, Ph.D., Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC9804, Rockville, MD 20852-9804, phone number 240-627-3827, or [theodoric.mattes@nih.gov](mailto:theodoric.mattes@nih.gov).

**SUPPLEMENTARY INFORMATION:** The following and all continuing U.S. patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to NYBC: United States Provisional Patent Application Number 62/317,342, filed May 1, 2016, the title of which is “Biomarkers and Immunogenic Compositions for Filarial Parasites” (HHS Reference No. E-288-2016-0-US-01); PCT Patent Application Number PCT/US2017/025554, filed March 31, 2017, the title of which is “Biomarkers and Immunogenic Compositions for Filarial Parasites” (HHS Reference No. E-288-2016-00-PCT-02); United States Patent Application Number 16/090,013, filed September 28, 2018, the title of which is “Biomarkers and Immunogenic Compositions for Filarial Parasites”

(HHS Reference No. E-288-2016-0-US-03); and United States Patent Application Number 17/076,616, filed October 21, 2020, the title of which is “Biomarkers and Immunogenic Compositions for Filarial Parasites” (HHS Reference No. E-288-2016-0-US-04).

The patent rights to this technology have been assigned to New York Blood Center, Inc. and the Government of the United States of America as represented by the Secretary, Department of Health & Human Services, by each institution’s respective inventors.

The prospective patent license will be for the purpose of consolidating the patent rights to New York Blood Center, Inc., for the development and commercialization of the technology.

Consolidation of these co-owned rights is intended to expedite development of the technology, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200-212.

The prospective interinstitutional agreement may include an exclusive license for NIAID’s rights in these jointly owned patents. It will be sublicensable, and any sublicenses granted by NYBC will be subject to the provisions of 37 CFR part 404. NIAID will retain its rights to non-exclusively license its rights to the patent applications to third parties for internal research use.

In the subject technology, researchers at NIAID and NYBC isolated and analyzed the transcriptome and proteome of the parasite at various life stages as well as its *Wolbachia sp.* endosymbiont to identify potential biomarkers for diagnostic assays and vaccine candidates. In all, they identified forty-seven (47) biomarkers. The associated patents claim the use of two or more of these biomarkers in conjunction with an adjuvant as an immunological composition, or the detection of any of these biomarkers in a serological-type assay.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and may be granted unless within fifteen (15) days from the date of this published notice the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated

confidentially, and may be made publicly available.

Complete license applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 25, 2021.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2021-14128 Filed 6-30-21; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

**SUPPLEMENTARY INFORMATION:** In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed

at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list>.

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

#### HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

#### HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190 (Formerly: Gamma-Dynacare Medical Laboratories)

#### HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130 (Formerly: Kroll Laboratory Specialists, Inc.; Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800-442-0438 (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602-457-5411/623-748-5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890

Dynacare \*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc., CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610-631-4600/877-642-2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800-255-2159

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085, Testing for Department of Defense (DoD) Employees Only

\* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Anastasia Marie Donovan**,  
*Policy Analyst.*

[FR Doc. 2021-14044 Filed 6-30-21; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Meeting of the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the meeting on August 17, 2021 of the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC). The meeting is open to the public and can be accessed remotely. Agenda with call-in information will be posted on the SAMHSA website prior to the

meeting at: <https://www.samhsa.gov/about-us/advisory-councils/meetings>.

The meeting will include consideration of the minutes from the March 18, 2021, SAMHSA, CMHS NAC meeting; updates from the CMHS Director to include discussions on the Mental Health Block Grant, Certified Community Behavioral Health Clinic, and Children Services; and updates from the Office of the Assistant Secretary for Mental Health and Substance Use.

**DATES:** Tuesday, August 17, 2021, 1:00 p.m. to 4:30 p.m., EDT, (OPEN).

**ADDRESSES:** The meeting will be held virtually only.

**FOR FURTHER INFORMATION CONTACT:**

Pamela Foote, Designated Federal Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 14E57B, Rockville, Maryland 20857, Telephone: (240) 276-1279, Fax: (301) 480-8491, Email: [pamela.foote@samhsa.hhs.gov](mailto:pamela.foote@samhsa.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Individuals interested in sending written submissions or making public comments, must forward them and notify the contact person on or before July 30, 2021. Up to three minutes will be allotted for each presentation.

Registration is required to participate during this meeting. To attend virtually, or to obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at: <http://snacregister.samhsa.gov/MeetingList.aspx> or communicate with the CMHS NAC Designated Federal Officer; Pamela Foote.

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA website at: <http://www.samhsa.gov/about-us/advisory-councils/cmhs-national-advisory-council> or by contacting the CMHS NAC Designated Federal Officer; Pamela Foote.

*Council Name:* Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council.

Dated: June 25, 2021.

**Carlos Castillo**,

*Committee Management Officer, SAMHSA.*

[FR Doc. 2021-14031 Filed 6-30-21; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4595–DR; Docket ID FEMA–2021–0001]

#### Kentucky; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4595–DR), dated April 23, 2021, and related determinations.

**DATES:** The declaration was issued April 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 23, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, flooding, landslides, and mudslides during the period of February 27 to March 14, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for

Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Breathitt, Clay, Estill, Floyd, Johnson, Lee, Magoffin, Martin, and Powell Counties for Individual Assistance.

Boyd, Breathitt, Carter, Casey, Cumberland, Elliott, Floyd, Franklin, Jackson, Johnson, Knott, Knox, Lawrence, Lee, Lincoln, Magoffin, Marion, Martin, Mason, Morgan, Ohio, Pike, Powell, Rockcastle, and Wolfe Counties for Public Assistance.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

#### Deanne Criswell,

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14088 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4595–DR; Docket ID FEMA–2021–0001]

#### Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the

Commonwealth of Kentucky (FEMA–4595–DR), dated April 23, 2021, and related determinations.

**DATES:** This amendment was issued June 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2021.

Madison County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

#### Deanne Criswell,

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14090 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4569–DR; Docket ID FEMA–2021–0001]

#### California; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of California (FEMA–4569–DR), dated October 16, 2020, and related determinations.

**DATES:** This change occurred on May 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14084 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4603–DR; Docket ID FEMA–2021–0001]

#### West Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4603–DR), dated May 13, 2021, and related determinations.

**DATES:** The declaration was issued May 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 13, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe winter storms during the period of February 10 to February 16, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Cabell, Lincoln, Mason, Putnam, and Wayne Counties for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14101 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4600–DR; Docket ID FEMA–2021–0001]

#### Georgia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4600–DR), dated May 5, 2021, and related determinations.

**DATES:** The declaration was issued May 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 5, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms and tornadoes during the period of March 25 to March 26, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Coweta, Fannin, Gilmer, Heard, Lumpkin, Pickens, Rabun, and White Counties for Public Assistance.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14096 Filed 6-30-21; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA-4594-DR; Docket ID FEMA-2021-0001]**

#### Tennessee; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-4594-DR), dated April 21, 2021, and related determinations.

**DATES:** The declaration was issued April 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 21, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe winter storms during the period of February 11 to February 19, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Bedford, Cannon, Coffee, DeKalb, Fentress, Jackson, Moore, Overton, Pickett, Putnam, Scott, Shelby, and Smith Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14087 Filed 6-30-21; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA-4583-DR; Docket ID FEMA-2021-0001]**

#### Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA-4583-DR), dated February 4, 2021, and related determinations.

**DATES:** This change occurred on June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy S. Pheil, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy, Sr., as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance



(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14086 Filed 6-30-21; 8:45 am]  
**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4558-DR; Docket ID FEMA-2021-0001]

**California; Amendment No. 11 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of California (FEMA-4558-DR), dated August 22, 2020, and related determinations.

**DATES:** This change occurred on May 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentialy Declared Disaster Areas; 97.049, Presidentialy Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050, Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentialy Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14082 Filed 6-30-21; 8:45 am]  
**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002]

**Final Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.  
**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The date of September 24, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the

final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbbit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbbit@fema.dhs.gov](mailto:patrick.sacbbit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

Community	Community map repository address
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**Emmet County, Iowa and Incorporated Areas  
Docket No.: FEMA-B-2019**

City of Armstrong .....	City Hall, 519 6th Street, Armstrong, IA 50514.
City of Estherville .....	City Hall, 2 North 7th Street, Estherville, IA 51334.
City of Wallingford .....	City Hall, 101 St. James Avenue, Wallingford, IA 51365.

Community	Community map repository address
Unincorporated Areas of Emmet County .....	Emmet County Courthouse, 609 1st Avenue North, Estherville, IA 51334.

**Lyon County, Iowa and Incorporated Areas  
Docket No.: FEMA-B-2031**

City of Alford .....	City Hall, 302 Main Street, Alford, IA 51230.
City of Doon .....	City Hall, 100 3rd Avenue, Doon, IA 51235.
City of George .....	City Hall, 120 South Main Street, George, IA 51237.
City of Inwood .....	City Hall, 103 South Main Street, Inwood, IA 51240.
City of Lester .....	City Hall, 105 West 5th Street, Lester, IA 51242.
City of Little Rock .....	City Hall, 402 Main Street, Little Rock, IA 51243.
City of Rock Rapids .....	City Hall, 310 South 3rd Street, Rock Rapids, IA 51246.
Unincorporated Areas of Lyon County .....	Lyon County Courthouse, 206 South 2nd Avenue, Rock Rapids, IA 51246.

**Cottonwood County, Minnesota and Incorporated Areas  
Docket No.: FEMA-B-2019**

City of Mountain Lake .....	City Hall, 930 3rd Avenue, Mountain Lake, MN 56159.
City of Windom .....	City Hall, 444 9th Street, Windom, MN 56101.
Unincorporated Areas of Cottonwood County .....	Cottonwood County Environmental Office, 339 9th Street, Windom, MN 56101.

**Kittitas County, Washington and Incorporated Areas  
Docket No.: FEMA-B-1853**

City of Cle Elum .....	City Hall, 119 West First Street, Cle Elum, WA 98922.
City of Ellensburg .....	City Hall, 501 North Anderson Street, Ellensburg, WA 98926.
City of Kittitas .....	City Hall, 207 North Main Street, Kittitas, WA 98934.
City of Roslyn .....	City Hall, 201 South 1st Street, Roslyn, WA 98941.
Town of South Cle Elum .....	Town Hall, 523 Lincoln Avenue, South Cle Elum, WA 98943.
Unincorporated Areas of Kittitas County .....	Kittitas County Department of Public Works, 411 North Ruby Street, Suite 1, Ellensburg, WA 98926.

[FR Doc. 2021-14115 Filed 6-30-21; 8:45 am]  
BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4566-DR; Docket ID FEMA-2021-0001]

**Delaware; Amendment No. 2 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA-4566-DR), dated October 2, 2020, and related determinations.

**DATES:** This change occurred on June 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark K. O'Hanlon, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Timothy S. Pheil, as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14083 Filed 6-30-21; 8:45 am]  
BILLING CODE 9111-23-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4596-DR; Docket ID FEMA-2021-0001]

**Alabama; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA-4596-DR), dated April 26, 2021, and related determinations.

**DATES:** The declaration was issued April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 26, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42

U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from a severe storm, straight-line winds, and tornadoes during the period of March 25 to March 26, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the state. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Bibb, Calhoun, Clay, Hale, Jefferson, Perry, Randolph, and Shelby Counties for Individual Assistance.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14091 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4599–DR; Docket ID FEMA–2021–0001]**

#### Oregon; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–4599–DR), dated May 4, 2021, and related determinations.

**DATES:** The declaration was issued May 4, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 4, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from a severe winter storm during the period of February 11 to February 15, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oregon have been designated as adversely affected by this major disaster:

Benton, Clackamas, Linn, Marion, Polk, and Yamhill Counties and the Confederated Tribes of Grand Ronde for Public Assistance.

All areas within the State of Oregon are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14095 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4604–DR; Docket ID FEMA–2021–0001]**

#### Hawaii; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4604–DR), dated May 13, 2021, and related determinations.

**DATES:** The declaration was issued May 13, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 13, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Hawaii resulting from severe storms, flooding, and landslides during the period of March 8 to March 18, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Colby Stanton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Hawaii have been designated as adversely affected by this major disaster:

Maui County for Public Assistance.  
All areas within the State of Hawaii are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14102 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2148]

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and

Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) [patrick.sacbabit@fema.dhs.gov](mailto:patrick.sacbabit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or

pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at

both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Hale .....	Town of Moundville (20-04-3557P).	The Honorable Tony Lester, Mayor, Town of Moundville, P.O. Box 98, Moundville, AL 35474.	Maps and Zoning Department, 410 Market Street, Moundville, AL 35474.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Jul. 8, 2021 .....	100096
Hale .....	Unincorporated areas of Hale County (20-04-3557P).	The Honorable Arthur Crawford, Chairman, Hale County Board of Commissioners, P.O. Box 396, Greensboro, AL 36744.	Hale County Engineering and Road Department, 703 Cork Street, Greensboro, AL 36744.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Jul. 8, 2021 .....	100094
Lee .....	Unincorporated areas of Lee County (21-04-2326P).	The Honorable Bill English, Chairman, Lee County Commission, P.O. Box 666, Opelika, AL 36803.	Lee County Building Inspections Department, 100 Orr Avenue, Opelika, AL36804.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 30, 2021 ....	010250
St. Clair .....	Unincorporated areas of St. Clair County (21-04-2404P).	The Honorable Paul Manning, Chairman, St. Clair County Commission, 165 5th Avenue, Suite 100, Ashville, AL 35953.	St. Clair County Flood Management Department, 165 5th Avenue, Suite 100, Ashville, AL 35953.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 1, 2021 .....	010290
Arkansas: Benton ..	City of Rogers (21-06-0048P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	Community Development Department, 301 West Chestnut Street, Rogers, AR 72756.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	050013
Colorado:						
Arapahoe .....	City of Centennial (20-08-0871P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 8, 2021 .....	080315
Broomfield .....	City and County of Broomfield (21-08-0022P).	The Honorable Patrick Quinn, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 1, 2021 .....	085073
Denver .....	City and County of Denver (20-08-0896P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 3, 2021 .....	080046
La Plata .....	City of Durango (20-08-0734P).	Mr. Jose Madrigal, City of Durango Manager, 949 East 2nd Avenue, Durango, CO 81301.	Planning Department, 1235 Camino Del Rio, Durango, CO 81301.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 7, 2021 .....	080099
Larimer .....	Unincorporated areas of Larimer County (20-08-0812P).	The Honorable John Kefalas, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, Suite 2200 Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 7, 2021 .....	080101
Florida:						
Charlotte. ....	Unincorporated areas of Charlotte County (21-04-2201P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 13, 2021 ....	120061
Collier .....	City of Naples (21-04-0422P).	The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 7, 2021 .....	125130

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lee .....	Unincorporated areas of Lee County (21-04-2302P).	Mr. Roger Desjarlais, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 16, 2021 ....	125124
Pinellas .....	City of Clearwater (21-04-1867P).	Mr. William Home, City of Clearwater Manager, P.O. Box 4748, Clearwater, FL 33756.	Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, FL 33756.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 9, 2021 .....	125096
Kentucky: Carroll ...	Unincorporated areas of Carroll County (21-04-1755P).	The Honorable Harold Tomlinson, Carroll County Executive, 440 Main Street, Carrollton, KY 41008.	Carroll County Solid Waste Department, 829 Polk Street, Carrollton, KY 41008.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 3, 2021 .....	210045
Massachusetts: Essex.	Town of Marblehead (21-01-0574P).	Mr. Jason Silva, Town of Marblehead Administrator, 188 Washington Street, Marblehead, MA 01945.	Engineering Department, 7 Widger Road, Marblehead, MA 01945.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 17, 2021 ....	250091
Mississippi: Panola	Unincorporated areas of Panola County (21-04-2141P).	The Honorable Cole Flint, President, Panola County Board of Supervisors, 151 Public Square, Batesville, MS 38606.	Panola County Land Development Commission, 245 Eureka Street, Batesville, MS 38606.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 29, 2021 ....	280125
New Mexico: Bernalillo.	Unincorporated areas of Bernalillo County (20-06-2872P).	The Honorable Charlene E. Pyskoty, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Department, 2400 Broadway Boulevard, Albuquerque, NM 87102.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 12, 2021 .....	350001
Pennsylvania: Lackawanna ...	Borough of Moosic (21-03-0726P)	The Honorable James Segilia, Mayor, Borough of Moosic, 715 Main Street, Moosic, PA 18507.	Borough Hall, 715 Main Street, Moosic, PA 18507.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 18, 2021 .....	420533
Lackawanna ...	Borough of Old Forge (21-03-0726P)	The Honorable Bob Legg, Mayor, Borough of Old Forge, 310 South Main Street, Old Forge, PA 18518.	Borough Hall, 310 South Main Street, Old Forge, PA 18518.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 18, 2021 .....	420535
Montgomery ...	Township of Hatfield (21-03-0243P)	Mr. Aaron Bibro, Township of Hatfield Manager, 1950 School Road, Hatfield, PA 19440.	Zoning Department, 1950 School Road, Hatfield, PA 19440.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 23, 2021 ....	420699
Texas: Bexar .....	Unincorporated areas of Bexar County (21-06-0275P).	The Honorable Nelson Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	480035
Comal .....	City of Bulverde (21-06-0275P).	The Honorable Bill Krawietz, Mayor, City of Bulverde, 30360 Cougar Bend, Bulverde, TX 78163.	City Hall, 30360 Cougar Bend, Bulverde, TX 78163.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	481681
Comal .....	Unincorporated areas of Comal County (21-06-0275P).	The Honorable Sherman Krause, Comal County Judge 100 Main Plaza, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	485463
Dallas .....	Town of Sunnyvale (20-06-3713P).	The Honorable Saji George, Mayor, Town of Sunnyvale, 127 North Collins Road, Sunnyvale, TX 75182.	Town Hall, 127 North Collins Road, Sunnyvale, TX 75182.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 18, 2021 .....	480188
Virginia: Albemarle	Unincorporated areas of Albemarle County (21-03-0029P).	The Honorable Ned L. Gallaway, Chairman, Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 27, 2021 ....	510006

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4605-DR; Docket ID FEMA-2021-0001]

**West Virginia; Major Disaster and Related Determinations****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA-4605-DR), dated May 20, 2021, and related determinations.**DATES:** The declaration was issued May 20, 2021.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 20, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms and flooding during the period of February 27 to March 4, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the state. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for

a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Cabell, Kanawha, Mingo, and Wayne Counties for Individual Assistance.

Boone, Kanawha, Lincoln, Logan, Mingo, and Wayne Counties for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,***Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14103 Filed 6-30-21; 8:45 am]

**BILLING CODE 9111-23-P****DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4602-DR; Docket ID FEMA-2021-0001]

**Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA-4602-DR), dated May 10, 2021, and related determinations.**DATES:** This amendment was issued June 10, 2021.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 10, 2021.

Chesterfield and Hanover Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,***Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14100 Filed 6-30-21; 8:45 am]

**BILLING CODE 9111-23-P****DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2147]

**Changes in Flood Hazard Determinations****AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.**ACTION:** Notice.**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency



Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below. **FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures

that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa .....	City of Buckeye (20-09-0491P).	The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 24, 2021 ....	040039
Maricopa .....	City of Buckeye (21-09-0258P).	The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 10, 2021 ....	040039
Maricopa .....	City of Goodyear (20-09-1436P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 24, 2021 ....	040046
Maricopa .....	Unincorporated Areas of Maricopa County (20-09-0491P).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 24, 2021 ....	040037
California:						
San Luis Obispo.	City of San Luis Obispo (21-09-0591P).	The Honorable Heidi Harmon, Mayor, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA 93401.	City Hall, 990 Palm Street, San Luis Obispo, CA 93401.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	060310

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Santa Clara ....	Unincorporated Areas of Santa Clara County (20-09-1627P).	The Honorable Mike Wasserman, President, Board of Supervisors, Santa Clara County, 70 West Hedding Street, 10th Floor, San Jose, CA 95110.	Santa Clara County, Department of Planning and Development, 70 West Hedding Street, 7th Floor East Wing, San Jose, CA 95110.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 16, 2021 ....	060337
Florida:						
Bay .....	City of Panama City Beach (19-04-5458P).	The Honorable Mark Sheldon, Mayor, City of Panama City Beach, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.	City Hall, 110 South Arnold Road, Panama City Beach, FL 32413.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 22, 2021 ....	120013
Bay .....	City of Panama City Beach (19-04-5699P).	The Honorable Mark Sheldon, Mayor, City of Panama City Beach, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.	City Hall, 110 South Arnold Road, Panama City Beach, FL 32413.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 22, 2021 ....	120013
Bay .....	Unincorporated Areas of Bay County (19-04-5458P).	Mr. Robert Carroll, Chairman, Commissioner District 2, Bay County, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 22, 2021 ....	120004
St. Johns .....	Unincorporated Areas of St. Johns County (20-04-5766P).	Mr. Jeremiah Ray Blocker, Chair, St. Johns County Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32095.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 21, 2021 ....	125147
St. Johns .....	Unincorporated Areas of St. Johns County (20-04-5819P).	Mr. Jeremiah Ray Blocker, Chair, St. Johns County Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32095.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 24, 2021 ....	125147
St. Johns .....	Unincorporated Areas of St. Johns County (21-04-0576P).	Mr. Jeremiah Ray Blocker, Chair, St. Johns County Board of County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32095.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 4, 2021 .....	125147
Idaho:						
Ada .....	City of Boise (21-10-0103P).	The Honorable Lauren McLean, Mayor, City of Boise, P.O. Box 500, Boise, ID 83701.	City Hall, 150 North Capitol Boulevard, Boise, ID 83701.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 24, 2021 ....	160002
Ada .....	City of Star (20-10-0725P).	The Honorable Trevor Chadwick, Mayor, City of Star, P.O. Box 130, Star, ID 83669.	City Hall, 10769 West State Street, Star, ID 83669.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 10, 2021 ....	160236
Ada .....	Unincorporated Areas of Ada County (20-10-0725P).	Mr. Rod Beck, Chairman, County Commissioner, District 2, Ada County, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 10, 2021 ....	160001
Illinois:						
Kane .....	Unincorporated Areas of Kane County (21-05-0452P).	The Honorable Corinne Pierog, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	Kane County Government Center, Water Resources Department, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 10, 2021 ....	170896
Kane .....	Village of Pingree Grove (21-05-0452P).	The Honorable Steve Wiedmeyer, Village President, Village of Pingree Grove, 555 Reinking Road, Pingree Grove, IL 60140.	Village Hall, 555 Reinking Road, Pingree Grove, IL 60140.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 10, 2021 ....	171078
Nevada:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Clark .....	City of Henderson (21-09-0235P).	The Honorable Debra March, Mayor, City of Henderson, City Hall, 240 South Water Street, Henderson, NV 89015.	Public Works Department, 240 South Water Street, Henderson, NV 89015.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Oct. 1, 2021 .....	320005
Clark .....	Unincorporated Areas of Clark County (21-09-0038P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89155.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 9, 2021 .....	320003

[FR Doc. 2021-14114 Filed 6-30-21; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4420-DR; Docket ID FEMA-2021-0001]

**Nebraska; Amendment No. 15 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska (FEMA-4420-DR), dated March 21, 2019, and related determinations.

**DATES:** This amendment was issued May 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 27, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from a severe winter storm, straight-line winds, and flooding during the period of March 9 to July 14, 2019, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and

Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend the declaration of March 21, 2019, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14081 Filed 6-30-21; 8:45 am]

BILLING CODE 9111-23-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4597-DR; Docket ID FEMA-2021-0001]

**New Jersey; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA-4597-DR), dated April 28, 2021, and related determinations.

**DATES:** The declaration was issued April 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 28, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe winter storm and snowstorm during the period of January 31 to February 2, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You

are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Claude Hyacinthe, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Cape May, Morris, Ocean, Sussex, and Warren Counties for Public Assistance.

Morris, Sussex, and Warren Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the State of New Jersey are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14094 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4602–DR; Docket ID FEMA–2021–0001]

**Virginia; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4602–DR), dated May 10, 2021, and related determinations.

**DATES:** The declaration was issued May 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 10, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe winter storms during the period of February 11 to February 13, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin I. Snyder, of

FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

Amelia, Appomattox, Bedford, Brunswick, Campbell, Caroline, Charlotte, Cumberland, Dinwiddie, Essex, Floyd, Franklin, Goochland, Greensville, Halifax, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, and Richmond Counties for Public Assistance.

All areas within the Commonwealth of Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14099 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

[Internal Agency Docket No. FEMA–4581–DR; Docket ID FEMA–2021–0001]

**Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4581–DR), dated January 15, 2021, and related determinations.

**DATES:** This change occurred on June 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Alana B. Kuhn, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Jon K. Huss, as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14085 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4600–DR; Docket ID FEMA–2021–0001]

#### Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4600–DR), dated May 5, 2021, and related determinations.

**DATES:** This amendment was issued May 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely

affected by the event declared a major disaster by the President in his declaration of May 5, 2021.

Gordon County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14097 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4596–DR; Docket ID FEMA–2021–0001]

#### Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4596–DR), dated April 26, 2021, and related determinations.

**DATES:** This amendment was issued June 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Alabama is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 26, 2021.

Bibb, Calhoun, Clay, Hale, Perry, Randolph, and Shelby Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–14093 Filed 6–30–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4601–DR; Docket ID FEMA–2021–0001]

#### Tennessee; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4601–DR), dated May 8, 2021, and related determinations.

**DATES:** The declaration was issued May 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 8, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, tornadoes, and flooding during the period of March 25 to April 3, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford

Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Davidson, Williamson, and Wilson Counties for Individual Assistance.

Campbell, Cannon, Cheatham, Claiborne, Clay, Davidson, Decatur, Fentress, Grainger, Hardeman, Henderson, Hickman, Jackson, Madison, Maury, McNairy, Moore, Overton, Scott, Smith, Wayne, Williamson, and Wilson Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-14098 Filed 6-30-21; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2149]

#### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before September 29, 2021.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS

report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2149, to Rick Sacbbit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbbit@fema.dhs.gov](mailto:patrick.sacbbit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbbit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbbit@fema.dhs.gov](mailto:patrick.sacbbit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to

review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [https://www.floodsrp.org/pdfs/srp\\_overview.pdf](https://www.floodsrp.org/pdfs/srp_overview.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location [https://hazards.fema.gov/femaportal/prelim\\_download](https://hazards.fema.gov/femaportal/prelim_download) and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by

the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
<b>Bastrop County, Texas and Incorporated Areas</b> <b>Project: 20-06-0106S Preliminary Date: February 11, 2021</b>	
City of Bastrop .....	City Hall, 1311 Chestnut Street, Bastrop, TX 78602.
City of Smithville .....	City Hall, 317 Main Street, Smithville, TX 78957.
Unincorporated Areas of Bastrop County .....	Bastrop County Development Services, 211 Jackson Street, Bastrop, TX 78602.
<b>City of Petersburg, Virginia (Independent City)</b> <b>Project: 16-03-2426S Preliminary Date: February 12, 2021</b>	
City of Petersburg .....	City Hall, 135 North Union Street, Petersburg, VA 23803.

[FR Doc. 2021-14110 Filed 6-30-21; 8:45 am]  
BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4595-DR; Docket ID FEMA-2021-0001]

**Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA-4595-DR), dated April 23, 2021, and related determinations.

**DATES:** This amendment was issued May 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2021.

Anderson, Fayette, Jessamine, Laurel, Madison, Warren, and Woodford Counties for Individual Assistance.

Boyd, Clark, Franklin, Greenup, Jackson, Knott, Lawrence, Leslie, Letcher, Lincoln, Morgan, Owsley, Perry, Pulaski, and Rockcastle Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**  
Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-14089 Filed 6-30-21; 8:45 am]  
BILLING CODE 9111-23-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLNVS01000 L58530000 EU0000 241A; 14-08807; MO# 4500146038]

**Notice of Realty Action: Modified Competitive Sale of 11 Parcels of Public Land in Clark County, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to offer 11 parcels of public land totaling 74.375 acres in the Las Vegas Valley (Valley) by modified competitive sale at not less than each parcel's appraised Fair Market Value (FMV) pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The BLM has completed a Determination of National Environmental Policy Act Adequacy (DNA) for the sale.

**DATES:** Submit written comments regarding the sale until August 16, 2021. The modified competitive sale is to occur by an online auction hosted by EnergyNet, the BLM's service provider.

The online sale will take place on September 1, 2021, at 8:00 a.m., Pacific Time, on EnergyNet's website at [https://www.EnergyNet.com/govt\\_listing.pl](https://www.EnergyNet.com/govt_listing.pl).

**ADDRESSES:** Mail written comments to the BLM Las Vegas Field Office (LVFO),



Assistant Field Manager, Division of Lands, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

In advance of the sale and no later than 30 days prior to the sale, a sales matrix providing the FMV for each sale parcel will be published on the following website: [https://www.EnergyNet.com/govt\\_listing.pl](https://www.EnergyNet.com/govt_listing.pl). Parcels may be viewed online at the EnergyNet website approximately ten business days after the posting of this Notice of Realty Action in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Jayangi Ayesha Gamage by email: [jgamage@blm.gov](mailto:jgamage@blm.gov), or by telephone: 702-515-5189. For general information on previous BLM public land sales, go to <https://www.blm.gov/snplma>. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** In order to determine the FMV through appraisal, the Department of the Interior may make certain extraordinary assumptions and hypothetical conditions concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government.

It is the buyer's responsibility to be aware of all applicable federal, state, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the buyer to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should make themselves aware of any federal or state law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such and acquiring future access will be the responsibility of the buyer.

Out of the 11 parcels of public lands that BLM proposes to offer, nine are located within Clark County jurisdiction and two within the City of Las Vegas jurisdiction. More specifically, of the 11 parcels, six are located in the northwest part of the Valley near Interstate 215 and State Route 157; four are located in southwest part of the Valley near Blue Diamond Road and Interstate 15; and one is located in the southeast part of the Valley near Interstate 15 and State Route 146.

The subject public lands are legally described as:

**Mount Diablo Meridian, Nevada**

- N-98823, 2.50 acres  
T. 19 S., R. 59 E.,  
Sec. 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .  
N-98824, 5.00 acres  
T. 19 S., R. 59 E.,  
Sec. 3, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .  
N-84169, 5.00 acres  
T. 19 S., R. 59 E.,  
Sec. 3, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ .  
N-98825, 5.00 acres  
T. 19 S., R. 60 E.,  
Sec. 29, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .  
N-98827, 2.50 acres  
T. 19 S., R. 60 E.,  
Sec. 30, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .  
N-98828, 2.50 acres  
T. 20 S., R. 60 E.,  
Sec. 6, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
N-98829, 2.50 acres  
T. 22 S., R. 60 E.,  
Sec. 13, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ .  
N-98830, 5.00 acres  
T. 22 S., R. 60 E.,  
Sec. 13, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .  
N-98831, 8.125 acres  
T. 22 S., R. 60 E.,  
Sec. 23, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and  
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ .  
N-92861, 2.50 acres  
T. 22 S., R. 61 E.,  
Sec. 30, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
N-98832, 33.75 acres  
T. 23 S., R. 61 E.,  
Sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , and  
NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

The areas described aggregate 74.375 acres, according to the official plats of the surveys of said lands on file with the BLM.

The sale will be held online at [https://www.EnergyNet.com/govt\\_listing.pl](https://www.EnergyNet.com/govt_listing.pl).

The BLM will publish this Notice of Realty Action once a week for three consecutive weeks in the *Las Vegas Review-Journal* newspaper. Prior to the sale, a sales matrix will be published on the following website: [https://www.EnergyNet.com/govt\\_listing.pl](https://www.EnergyNet.com/govt_listing.pl).

The sales matrix provides information specific to each sale parcel such as legal description, physical location, encumbrances, acreage, and FMV. The FMV for each parcel will be available in the sales matrix no later than 30 days prior to the sale.

Information concerning the sale parcels, including encumbrances of record, appraisals, reservations, procedures and conditions, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), and other environmental documents that may appear in the BLM public files for the sale parcels are available for review by appointment only, during business hours, from 8:00 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, at the BLM LVFO, except during Federal holidays.

This sale is in conformance with the BLM Las Vegas Resource Management Plan Record of Decision LD-1, approved on October 5, 1998. The Las Vegas Valley Disposal Boundary Environmental Impact Statement and Record of Decision issued on December 23, 2004, and the Las Vegas In-Valley Area Multi-Action Analysis Environmental Assessment (EA), DOI-BLM-NV-S010-2016-0054-EA (<https://eplanning.blm.gov/eplanning-ui/project/60096/510>), analyzed the sale parcels. A parcel-specific DNA, document number DOI-BLM-NV-S010-2020-0043-DNA, was prepared in connection with this Notice of Realty Action.

Submit comments to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including any personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Any comments regarding the proposed sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any comments, this realty action will become the final determination of the Department of the Interior.

The use of the modified competitive sale method is consistent with 43 CFR 2711.3-2. Public lands may be offered for sale by modified competitive bidding procedures when the

authorized officer determines it is necessary based on public policies. Following Centers for Disease Control recommendations to coordinate with state and local health officials on mitigating the risk of COVID-19 transmission, the BLM has determined that utilizing an online auction would maximize the opportunity for public input and involvement while prioritizing the health and safety of BLM employees and the interested public. This approach is consistent with the State of Nevada's current COVID-19 Mitigation and Management Guidance for Safe Gatherings, which limits the size of public gatherings to 100 individuals, or 35 percent occupancy (whichever is fewer). While local guidance is subject to change over time, the BLM's requirements to provide advance public notification regarding the sale and procedures for participation, limit our ability to adapt or change with updated guidance. Therefore, the BLM will adhere to holding this sale online, as this method offers the most assurance that a sale can be conducted whether COVID-19 restrictions are lessened or increased.

Sale procedures and registration process:

Federal law requires that bidders must be:

- (1) a citizen of the United States, 18 years of age or older;
- (2) a corporation subject to the laws of any state or of the United States;
- (3) a state, instrumentality, or political subdivision authorized to hold property; or
- (4) an entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada.

The successful bidder must submit proof of citizenship or articles of incorporation within 30 days from receipt of acceptance of bid letter. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Citizenship documents or Articles of Incorporation (as applicable) must be provided to the BLM LVFO for each sale.

To participate in the BLM bidding process, you must register and obtain a bidder number. Registration for online bidding will be available prior to the sale date at EnergyNet's website ([https://www.EnergyNet.com/govt\\_listing.pl](https://www.EnergyNet.com/govt_listing.pl)). Click on the orange "Register for Sale" button on the blue "BLM Nevada SNPLMA Summer 2021 Land Sale" banner to register, and click on the light blue "View Listings" button on the "BLM Nevada SNPLMA Summer 2021 Land Sale" banner to obtain maps and get information on how to submit

competitive online bids via the internet for the sale. A submitted online internet bid is a binding offer.

In order to participate in this sale, prospective buyers must create an EnergyNet account, complete the EnergyNet Bidding Terms Agreement, request a bidding allowance, and register for the BLM Nevada SNPLMA Summer 2021 Land Sale. EnergyNet may require approximately five (5) business days to determine bidder's financial qualifications. Additional information on how to register at EnergyNet may be found at [https://www.energynet.com/page/Government\\_Listings\\_Participation](https://www.energynet.com/page/Government_Listings_Participation).

Assistance creating an EnergyNet account and registering for the sale is available by telephoning the EnergyNet Government Resources department at 877-351-4488 and by using the following link to create a Buyer's Account: [https://www.EnergyNet.com/bidder\\_reg.pl?registration\\_choice=government](https://www.EnergyNet.com/bidder_reg.pl?registration_choice=government). After the account is created, follow the link "Submit Bank Information Online" and fill in the form with the following information:

- Bank Name
- Banker's Name
- Telephone Number of Banker
- Address of Bank
- Requested Bid Allowance amount

EnergyNet will verify the Bank Name is a recognized financial institution and contact the banker to ask if the prospective buyer has the financial means to cover the requested Bid Allowance, which is the limit or ceiling for bids and is NOT recorded as a bid or offer per property at auction. Upon receiving an affirmative answer, the allowance will be granted.

Important notes regarding your Bid Allowance: For security reasons, a bidder must contact its banker and grant permission to speak to EnergyNet about its Bid Allowance request. EnergyNet will not request the account balance or ask any questions about assets or lines of credit. EnergyNet will not request the bank account number, nor will it have the ability to withdraw funds.

The auction website is open to the public. The internet-based land sale can be observed in real-time. However, you must register as a bidder on the website, in advance, in order to submit bids for a parcel. The auction website will be active and available for use approximately ten days after the date of this Notice and will remain available for viewing until the completion of the auction. The available parcels listed in this Notice will be detailed on the EnergyNet. Interested parties may visit the website at any time. Potential

bidders may register for the online auction as soon as the auction website is active.

Potential bidders are encouraged to visit the website prior to the start of the open bidding period to become familiar with the site and review the bidding instructions available at [https://www.energynet.com/page/Government\\_Listings\\_Participation](https://www.energynet.com/page/Government_Listings_Participation). Supporting documentation is available on the website to familiarize new users to the process and answer frequently asked questions.

Payments to the BLM will not be made through the auction website. At the conclusion of the final parcel's bidding period, the successful bidder for each parcel will be provided instructions by the online auction system via email on how to make the required payment to the BLM. In addition, you will be required to pay a commission fee to EnergyNet of 1.5 percent (a percentage) of the highest qualifying bid for each parcel purchased by successful bidders. EnergyNet will submit a separate invoice via email to each successful bidder for the total amount due to the BLM and a separate invoice for the amount due to EnergyNet.

Parcels will begin online bidding at the established FMV. Each parcel will have its own unique open bidding period, with start and stop times clearly identified on the auction website. The open bidding period for each parcel will run for three hours from start to finish, and only bids placed during this three-hour period will be accepted. Each parcel will close bidding sequentially so that each bidder will know if it is the highest winning bid before subsequent parcels close. The website will display each current high bid, and the high bid bidder's number.

The online system allows participants to submit maximum bids, which is the highest amount a bidder is willing to pay for each parcel to enable a bidder to participate in the online auction without having to be logged into the website at the time the auction period closes. The auction website provides a full explanation of placing maximum bids, as well as an explanation of how it works to place bids on your behalf to maintain your high bidder status up to the chosen maximum bid amount. The BLM strongly encourages potential bidders to review the bidding tutorial in the Frequently Asked Questions area on the auction website in advance of the sale. EnergyNet will declare the highest qualifying bid as the high bid. The successful bidder must submit a deposit of not less than 20 percent of the successful bid amount by 4:00 p.m.,

Pacific Time, immediately following the close of the sale in the form of a certified check, postal money order, electronic fund transfer, bank draft, or cashier's check made payable in U.S. dollars to the "Department of the Interior, Bureau of Land Management."

The BLM will send the successful bidder(s) an acceptance of bid letter with detailed information for full payment. In accordance with 43 CFR 2711.3-1(d), the successful bidder will forfeit the bid deposit if it fails to pay the full purchase price within 180 days of the sale. The BLM will make no exceptions. The BLM cannot accept the remainder of the bid price at any time following the 180th day after the sale.

If a bidder is the apparent successful bidder with respect to multiple parcels and that bidder fails to submit the minimum 20 percent bid deposit resulting in default on any single parcel following the sale, the BLM may cancel the sale of all parcels to that bidder. If a successful bidder cannot consummate the transaction for any reason, the BLM may consider the second highest bidder to purchase the parcel. If there are no acceptable bids, a parcel may remain available for sale on a future date without further legal notice.

The BLM LVFO must receive the request for escrow instructions prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM LVFO by 4:30 p.m. Pacific Time, 30 days from the date on the high-bidder letter. There are no exceptions. To submit a name change, the apparent successful bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM LVFO.

The BLM must receive the remainder of the full bid price for the parcel no later than 4:30 p.m. Pacific Time, within 180 days following the day of the sale. The successful bidder must submit payment in the form of a certified check, postal money order, bank draft, cashier's check, or make available by electronic fund transfer payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management" to the BLM LVFO. The BLM will not accept personal or company checks.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. The BLM will not sign any documents related to 1031 Exchange transactions. The bidder is responsible for timing for completion of such an exchange. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3-1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale within 30 days, if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

According to the SNPLMA, as amended, Public Law 105-263 section 4(c), lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws until such time as the Secretary of the Interior (Secretary) terminates the withdrawal or the lands are patented.

Upon publication of this Notice in the **Federal Register**, the described land will be segregated from all forms of appropriation under the public land laws, except for the sale provisions of the FLPMA. Upon publication of this Notice and until completion of this sale, the BLM will no longer accept land use applications affecting the parcels identified for sale. The parcels may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. The segregated effect of this Notice terminates upon issuance of a patent or other document of conveyance to such lands, or publication in the **Federal Register** of a termination of the segregation. The total segregation period may not exceed two years unless it is extended by the BLM State Director, Nevada prior to the termination date in accordance with 43 CFR 2711.1-2(d).

Terms and Conditions: FLPMA Section 209, 43 U.S.C. 1719(a), states that "all conveyances of title issued by the Secretary . . . shall reserve to the United States all minerals in the lands." Accordingly, all minerals for the sale parcels will be reserved to the United States. The patents, when issued, will contain a mineral reservation to the United States for all minerals.

In response to requests to clarify this mineral reservation as it relates to mineral materials, such as sand and gravel, we refer interested parties to the regulations at 43 CFR 3601.71(b), which provides that the owner of the surface estate of lands with reserved Federal minerals may "use a minimal amount of mineral materials for . . . personal use"

within the boundaries of the surface estate without a sales contract or permit. The regulation provides that all other use, absent statutory or other express authority, requires a sales contract or permit. The BLM refers interested parties to the explanation of this regulatory language in the preamble to the final rule published in the **Federal Register** in 2001, available at <https://www.federalregister.gov/d/01-29001>, which states that minimal use "would not include large-scale use of mineral materials, even within the boundaries of the surface estate" (66 FR 58894). Further explanation is contained in BLM Instruction Memorandum No. 2014-085 (April 23, 2014), available on BLM's website at <https://www.blm.gov/policy/im-2014-085>.

The parcels are subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any Right-of-way (ROW) within the sale parcels will have the opportunity to amend its ROW for conversion to a new term, including in perpetuity if applicable, or to an easement. The BLM will notify valid existing ROW holders of record of their ability to convert their compliant ROWs to perpetual ROWs or easements. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of its current authorization.

The following numbered terms and conditions will appear on the conveyance documents for the sale parcels:

1. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary are reserved to the United States, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcels are subject to valid existing rights;

4. The parcels are subject to reservations for roads, public utilities, and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans; and

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

To the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA, as amended. Accordingly, notice is hereby given that the lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor that any hazardous substances have been disposed of or released on the subject properties.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of a parcel will not be on a contingency basis.

**Authority:** 43 CFR 2711.1–2.

**Stephen Leslie,**

*Acting Assistant Field Manager, Division of Lands.*

[FR Doc. 2021–14026 Filed 6–30–21; 8:45 am]

**BILLING CODE 4310–HC–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1527 (Final)]

### Standard Steel Welded Wire Mesh From Mexico; Scheduling of the Final Phase of Anti-Dumping Duty Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**DATES:** June 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julie Duffy ((202) 708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for the Commission’s antidumping duty and countervailing duty investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** Effective December 3, 2020, the Commission established a general schedule for the conduct of the final phase of its

investigations on standard steel welded wire mesh (“wire mesh”) from Mexico (85 FR 81487, December 16, 2020), following a preliminary determination by the U.S. Department of Commerce (“Commerce”) that imports of subject wire mesh from Mexico were being subsidized by the government of Mexico (85 FR 78124, December 3, 2020). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 16, 2020 (85 FR 81487). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on February 12, 2021. All persons who requested the opportunity were permitted to participate. The Commission subsequently issued its final determination that an industry in the United States was materially injured by reason of imports of wire mesh from Mexico provided for in subheadings 7314.20.00 and 7314.39.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”) that have been found by Commerce to be subsidized by the government of Mexico (86 FR 18555, April 9, 2021).

Commerce has issued a final affirmative antidumping duty determination with respect to wire mesh from Mexico (86 FR 32891, June 23, 2021). Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigation on imports of wire mesh from Mexico.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce’s final antidumping duty determination is July 2, 2021. Supplemental party comments may address only Commerce’s final antidumping duty determination regarding imports of wire mesh from Mexico. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of the Commission’s antidumping duty investigation covering subject imports from Mexico will be placed in the nonpublic record on July 8, 2021, and a public version will be issued thereafter.

For further information concerning this proceeding see the Commission’s notice cited above and the

Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission’s rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission’s rules, each document filed by a party to the antidumping duty and countervailing duty investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission’s rules.

By order of the Commission.

Issued: June 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–14020 Filed 6–30–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–771–772, and 775 (Fourth Review)]

### Stainless Steel Wire Rod From Japan, Korea, and Taiwan; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on stainless steel wire rod from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2021. To be assured of consideration, the deadline for responses is August 2, 2021. Comments on the adequacy of responses

may be filed with the Commission by September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On September 15, 1998, the Department of Commerce (“Commerce”) issued antidumping duty orders on imports of stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan (63 FR 49327). Following the first five-year reviews by Commerce and the Commission, effective August 13, 2004, Commerce issued a continuation of the antidumping duty orders on imports of stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan (69 FR 50167). Commerce revoked the antidumping duty order on imports of stainless steel wire rod from Sweden, effective April 23, 2007 (72 FR 25261, May 4, 2007). Following the second five-year reviews by Commerce and the Commission, effective June 17, 2010, Commerce issued a continuation of the antidumping duty orders on imports of stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan (75 FR 34424). Following the third full five-year reviews by Commerce and the Commission, effective August 15, 2016, Commerce revoked the antidumping duty orders on imports of stainless steel wire rod from Italy and Spain, as a result of the ITC's determination that revocation of the antidumping duty orders on stainless steel wire rod from Italy and Spain would not likely lead to continuation or recurrence of material injury to an industry in the United States. Additionally, Commerce issued a continuation of the antidumping duty orders on imports of stainless steel wire rod from Japan, Korea, and Taiwan (81 FR 54043). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would

be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of these five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Japan, Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original and full first and second and third five-year review determinations, the Commission found one *Domestic Like Product* consisting of all stainless steel wire rod corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and full first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as consisting of all domestic producers of stainless steel wire rod.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in

the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

**Written submissions.**—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 2, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 10, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21–5–492, expiration date June 30, 2023. Public reporting burden for the

request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

**Information to be provided in response to this notice of institution:** If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing

information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime,

maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-14014 Filed 6-30-21; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-298 (Fifth Review)]

### Porcelain-on-Steel Cooking Ware From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on porcelain-on-steel cooking ware from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2021. To be assured of consideration, the deadline for responses is August 2, 2021. Comments on the adequacy of responses may be filed with the Commission by September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Jones (202-205-3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

*Background.*—On December 2, 1986, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of porcelain-on-steel cooking ware from China (51 FR 43414). Following the first five-year reviews by Commerce and the Commission, effective April 14, 2000,



Commerce issued a continuation of the antidumping duty order on porcelain-on-steel cooking ware from China (65 FR 20136). Following the second five-year reviews by Commerce and the Commission, effective November 22, 2005, Commerce issued a continuation of the antidumping duty order on porcelain-on-steel cooking ware from China (70 FR 70581). Following the third five-year reviews by Commerce and the Commission, effective March 14, 2011, Commerce issued a continuation of the antidumping duty order on imports of porcelain-on-steel cooking ware from China (76 FR 13602). Following the fourth five-year reviews by Commerce and the Commission, effective August 11, 2016, Commerce issued a continuation of the antidumping duty order on imports of porcelain-on-steel cooking ware from China (81 FR 53120). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, its full first five-year review determination, and its expedited second, third, and fourth five-year review determinations concerning porcelain-on-steel cooking ware from China, the Commission defined the Domestic Like Product as all porcelain-on-steel cooking ware, including teakettles. One Commissioner defined

the Domestic Like Product differently in the original determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first five-year review determination, and its expedited second, third, and fourth five-year review determinations concerning porcelain-on-steel cooking ware from China, the Commission defined the Domestic Industry as consisting of all domestic producers of porcelain-on-steel cooking ware, including teakettles. One Commissioner defined the Domestic Industry differently in the original determination.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission

rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

**Written submissions.**—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 2, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments

is September 10, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-493, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be provided in response to this notice of institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or

the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from

the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the

use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-14017 Filed 6-30-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1179]

### **Certain Pouch-Type Battery Cells, Battery Modules, and Battery Packs, Components Thereof, and Products Containing the Same; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement; Termination of Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review an initial determination ("ID") (Order No. 74) of the presiding chief administrative law judge ("CALJ") granting a joint motion to terminate the investigation on the basis of a settlement agreement. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)

205-2392. 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](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") on October 9, 2019, based on a complaint filed by SK Innovation Co., Ltd. of Seoul, Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia (collectively, "SK"). 84 FR 54173-74 (Oct. 9, 2019). The complaint alleges a violation 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 pouch-type battery cells, battery modules, and battery packs, components thereof, and products containing the same by reason of infringement of claims 1-36 of U.S. Patent No. 10,121,994 ("the '994 patent"). The complaint named as respondents LG Chem, Ltd. of Seoul, Republic of Korea, and LG Chem Michigan, Inc. of Holland, Michigan (collectively, "LG"). The Commission's Office of Unfair Import Investigations ("OUII") also was named as a party. Subsequently, the investigation was terminated in part based on withdrawal of the complaint as to claims 8, 9, 17, 26, 27, and 35 of the '994 patent. Order No. 23 (March 25, 2020), *unreviewed by* Notice (Apr. 22, 2020). Further, the Commission determined that the economic prong of the domestic industry is satisfied. Order No. 51 (Dec. 14, 2020), *reviewed*, and on review, *affirmed with modified reasoning by* Notice (Jan. 14, 2021). Also, the Commission determined to allow complainants: (1) To amend the complaint and notice of investigation to reflect the respondents' corporate reorganization and (2) to withdraw allegations concerning certain claims of the '994 patent from the complaint. Order No. 53 (Jan. 11, 2021), *unreviewed by* 86 FR 9368-69 (Feb. 12, 2021).

On May 25, 2021, complainants SK and respondents LG (together, the "Private Parties") moved jointly to terminate the investigation on the basis of a settlement agreement

(“Agreement”). On May 27, 2021, OUII filed a response in support of the joint motion. On May 28, 2021, the Private Parties were directed to file a revised public version of the Agreement. Order No. 73. Pursuant to Order No. 73, the Private Parties filed a revised public version of the Agreement on June 1, 2021.

On June 2, 2021, the CALJ issued the subject ID granting the subject motion. The ID finds that the Agreement completely resolves the dispute as to the Private Parties. The ID also finds that consistent with Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), the Private Parties aver that there are no other agreements, written or oral, express or implied, between them concerning the subject matter of this investigation. ID at 2 (citing Mot. at 2). The ID also finds that termination of this investigation does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, or United States consumers. *Id.*; see 19 CFR 210.50(b)(2). No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on June 25, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 28, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-14080 Filed 6-30-21; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1279 (Review)]

### Hydrofluorocarbon Blends From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine

whether revocation of the antidumping duty order investigation on hydrofluorocarbon blends (“HFC blends”) from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2021. To be assured of consideration, the deadline for responses is August 2, 2021. Comments on the adequacy of responses may be filed with the Commission by September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Jones (202-205-3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—On August 19, 2016, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of hydrofluorocarbon blends from China (81 FR 55436). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as two domestic like products, one consisting of in-scope HFC blends and one consisting of in-scope HFC components. The *Domestic Like Product* for this review consists of in-scope HFC blends.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of HFC blends and HFC components. The *Domestic Industry for this review is defined as all domestic producers of HFC blends*.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is August 19, 2016.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s

designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 2, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 10, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-491, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall

notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be provided in response to this notice of institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject*

*Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3 to 5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S.

importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject*

*Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-14018 Filed 6-30-21; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-308-310, and 520-521 (Fifth Review)]

### Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, Thailand; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews



pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2021. To be assured of consideration, the deadline for responses is August 2, 2021. Comments on the adequacy of responses may be filed with the Commission by September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On December 12, 1986, the Department of Commerce (“Commerce”) issued antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil and Taiwan (51 FR 45152). On February 10, 1987, Commerce issued an antidumping duty order on imports of carbon steel butt-weld pipe fittings from Japan (52 FR 4167). On July 6, 1992, Commerce issued antidumping duty orders on imports of carbon steel butt-weld pipe fittings from China and Thailand (57 FR 29702). Following the first five-year reviews by Commerce and the Commission, effective January 6, 2000, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (65 FR 753). Following second five-year reviews by Commerce and the Commission, effective November 21, 2005, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (70 FR

70059). Following the third five-year reviews by Commerce and the Commission, effective April 15, 2011, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (73 FR 21331). Following the fourth five-year reviews by Commerce and the Commission, effective August 23, 2016, Commerce issued a continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (81 FR 57562). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of these five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is Brazil, China, Japan, Taiwan, and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as all carbon steel butt-weld pipe fittings corresponding to Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion

of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined a single *Domestic Industry*: Producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. One Commissioner defined the *Domestic Industry* differently in the original determinations concerning Brazil, Japan, and Taiwan. In the original determinations concerning China and Thailand, the Commission excluded two domestic producers, Tube Line and Weldbend, from the *Domestic Industry* under the related parties provision. In its expedited first five-year review determinations, the Commission once again excluded Tube Line from the *Domestic Industry* under the related parties provision but found that Weldbend was no longer a related party eligible for exclusion. Certain Commissioners did not exclude Tube Line from the *Domestic Industry* in the expedited first five-year reviews. In the full second five-year review determinations, the Commission determined that appropriate circumstances did not exist for excluding any domestic producer from the *Domestic Industry* as a related party. In its expedited third and fourth five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of carbon steel butt-weld pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.



Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 2, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 10, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 21-5-494, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission,

500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be provided in response to this notice of institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic*

*Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise*

in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-14016 Filed 6-30-21; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Controversion of Right to Compensation

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of the Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202-693-8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 914(d) of the Act, and 20 CFR 702.251, if an employer controverts the right to compensation he/she shall file

with the district director in the affected compensation district on or before the fourteenth day after he/she has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted. Form LS-207 is used for this purpose. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 15, 2021 (86 FR 19905).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL-OWCP.

*Title of Collection:* Notice of Controversion of Right to Compensation.

*OMB Control Number:* 1240-0042.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 550.

*Total Estimated Number of Responses:* 19,250.

*Total Estimated Annual Time Burden:* 4,813 hours.

*Total Estimated Annual Other Costs Burden:* \$2,118.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: June 23, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021-14105 Filed 6-30-21; 8:45 am]

BILLING CODE 4510-CF-P

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Servicing Multi-Piece and Single Piece Rim Wheels Standard

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie by telephone at 202-693-0456 or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of the requirement is to reduce workers' risk of death or serious injury by ensuring that restraining devices used by them during the servicing of multi-piece rim wheels are in safe operating condition. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 2, 2021 (86 FR 17410).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OSHA.

*Title of Collection:* Servicing Multi-Piece and Single Piece Rim Wheels Standard.

*OMB Control Number:* 1218–0219.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 85.

*Total Estimated Number of Responses:* 9.

*Total Estimated Annual Time Burden:* 1 hour.

*Total Estimated Annual Other Costs Burden:* \$0.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

**Crystal Rennie,**

*Senior PRA Analyst.*

[FR Doc. 2021–14107 Filed 6–30–21; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Payments

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of the Workers’ Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before August 2, 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

#### FOR FURTHER INFORMATION CONTACT:

Mara Blumenthal by telephone at 202–693–8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Under sections 914(b) & (c) of the Longshore Act, a self-insured employer or insurance carrier is required to pay compensation within 14 days after the employer has knowledge of the injury or death and immediately notify the district director of the payment. Under Section 914(g), the employer/carrier is required to issue notification of final payment of compensation. Form LS–208 has been designated as the proper form on which report of those payments is to be made. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 15, 2021 (86 FR 19906).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR

cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OWCP.

*Title of Collection:* Notice of Payments.

*OMB Control Number:* 1240–0041.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 550.

*Total Estimated Number of Responses:* 33,000.

*Total Estimated Annual Time Burden:* 5,500 hours.

*Total Estimated Annual Other Costs Burden:* \$3,630.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: June 23, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021–14104 Filed 6–30–21; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Information Collection Activities; Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the “Eating and Health Supplement to the American Time Use Survey.” A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the

**ADDRESSES** section of this notice on or before August 30, 2021.

**ADDRESSES:** Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to [BLS\\_PRA\\_Public@bls.gov](mailto:BLS_PRA_Public@bls.gov).

**FOR FURTHER INFORMATION CONTACT:** Erin Good, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period "yesterday," from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

Time use data allows researchers to analyze the choices people make in how they spend their time, along with the time and income constraints they face. The data from the proposed Eating and Health module supplement can be used for research on the inter-relations of time use patterns and body mass index (BMI), food assistance program participation, grocery and food shopping, and meal preparation. These

data enhance the understanding of peoples' overall well-being.

Information collected in the supplement will be published as a public use data set to facilitate research on numerous topics, such as: The association between eating patterns, physical activity, and BMI; time-use patterns of food assistance program participants and low-income nonparticipants; and how time-use varies by health status. Sponsored by the Economic Research Service (ERS) of the United States Department of Agriculture (USDA), the supplement is asked of respondents immediately upon their completion of the American Time Use Survey (ATUS).

The Eating and Health supplement supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues, specifically the association between time-use patterns and eating and physical activity behavior and health. The data from the Eating and Health Module Supplement also closely support the mission of its sponsor, ERS, to improve the nation's nutrition and health. The supplement surveys individuals aged 15 and up from a nationally representative sample of approximately 2,060 sample households each month.

**II. Current Action**

Office of Management and Budget clearance is being sought for the 2022-23 Eating and Health Module of questions to follow the American Time Use Survey (ATUS). The Eating and Health Module, if approved, will include questions about peoples' eating behaviors, food assistance program participation, in-store and online grocery shopping, prepared meal purchases, food preparation, and food sufficiency. It will also include questions on general health and physical exercise.

There have been few efforts to collect data on time-use and how it relates to BMI, food assistance participation, grocery shopping, and meal preparation. The ATUS first ran Eating and Health Modules in 2006-08 and a modified version in 2014-16. The previous Eating and Health Modules produced useful data that have been used in a variety of research products that inform policy and programs on eating and other behaviors.

Fielding the Eating and Health Module Supplement in calendar years 2022-23 will allow researchers to monitor changes in Americans' time use patterns along with changes in Americans' eating activities, BMI values, and food assistance

participation. Additionally, the proposed 2022-23 Eating and Health Module includes several important questions that were not included in previous modules. This includes questions about online grocery shopping, quality of diet, and physical exercise. These questions will provide an additional dimension to analyses of the time-use data and BMI, food assistance participation, grocery shopping, meal preparation, and physical exercise.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Title of Collection:* Eating and Health Supplement to the American Time Use Survey.

*OMB Number:* 1220-0187.

*Type of Review:* Reinstatement, with change.

*Affected Public:* Individuals or Households.

*Total Respondents:* 9,435.

*Frequency:* One time.

*Total Responses:* 9,435.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 786 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on June 24, 2021.

**Eric Molina,**

*Acting Chief, Division of Management Systems.*

[FR Doc. 2021-14106 Filed 6-30-21; 8:45 am]

**BILLING CODE 4510-24-P**

**NATIONAL SCIENCE FOUNDATION****Agency Information Collection  
Activities: Comment Request**

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:****Summary of Comments on the National Science Foundation Proposal and Award Policies and Procedures Guide and NSF’s Responses**

NSF received one comment in response to the First **Federal Register** notice published on April 1, 2021, at 86 FR 17207. The comment and summary responses are included in the supporting statement for the information collection request.

*Title of Collection:* National Science Foundation’s Education and Training Application Pilot.

*OMB Approval Number:* 3145-0248.

*Type of Request:* Intent to seek approval to extend with revision an information collection for three years.

The National Science Foundation (NSF) seeks to develop and pilot test an electronic data collection system that supports applications to education and training opportunities funded by NSF and allows tracking of participants’ program experiences and career outcomes over time. The pilot aims to provide NSF with information to inform decisions in developing an effective and low-burden approach to collect data needed to monitor programs, report to NSF leadership, and comply with congressional requirements.

The main goal of the current project is to build upon a system originally developed for the NSF Research Experiences for Undergraduates (REU) program. The work involves revising and enhancing the system based on the lessons from the initial REU pilot and conducting further testing to prepare it for adoption for the REU program and other education and training programs at NSF. The original REU data system was designed to collect data required by Congress in the America COMPETES Reauthorization Act of 2010, which states that students in the REU program must “be tracked, for employment and continued matriculation in STEM fields, through receipt of the undergraduate degree and for at least three years thereafter” (Section 514[a][6] of Pub. L. 111-358). A study conducted by the Science and Technology Policy Institute determined the need for NSF to create new data collection because “the status quo of [REU] participants providing demographic information to NSF’s Research Performance Report System, coupled with voluntary tracking of participants’ career choices by the REU [principal investigators], was clearly insufficient to meet the [congressional] mandate”<sup>i</sup>. To respond to the America

<sup>i</sup> Zuckerman, B.J. Doyle, A. Mudd, T. Jones, and G. Davis. “Assessment of the Feasibility of Tracking Participants from the National Science Foundation’s Research Experience for

COMPETES mandate, NSF commissioned a data system for the REU program. The current project is the evolution of this early test that originated with the REU program to leverage the system and scale its pilot test to include other NSF programs that similarly invest in human capital development. The new system—The Education and Training Application (ETAP)—supports NSF’s learning agenda and is in alignment with the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115-435), which requires NSF to collect, use, or acquire data to support decision making.

In addition to developing and enhancing the system, the present study will pilot test collecting data from a sample of Sites that volunteer to participate. (A Site is an instance of an NSF award offering an education and training opportunity at a given point in time.) By participating in this study, principal investigators (PIs) from these Sites will experience the data collections firsthand and provide feedback to help NSF improve the system before expanding its use. For example, PIs will have an opportunity to determine whether the system facilitates managing applications more efficiently than the usual process, comment on whether the system is user friendly, assess the usefulness of data reports the system produces, and suggest enhancements to the system.

Four key activities define the pilot:

1. Testing a web-based approach to obtain basic background and participation information while supporting applications to individual Sites. Specifically, PIs choose whether they will be running a competitive application process for their Site (for example, an REU Site award recruiting participants nationally) or noncompetitive application (for example, an REU Supplement award that invites its participants). Data collected from applicants will therefore depend on the type of application process for their Sites of interest. The system will include the following:

- Common registration form. All applicants will need to register to apply and participate in an NSF-funded opportunity participating in the pilot. Individuals who are participating in awards that do not have a competitive application process will only need to complete a profile with basic demographic and contact information and provide other information not captured in the profile but that is

Undergraduates (REU) Sites Program.” Final report Washington, DC: STPI, 2016.

required for program monitoring and evaluation purposes, such as students' current enrollment or class standing (if applicable).

- Additional application requirements. Individuals wishing to apply for awards that run competitive applications will be able to use the ETAP to apply to multiple NSF awards through a fully operational electronic application. They will first complete the common registration form (described above), which collects basic demographic and contact information needed for analysis and tracking purposes. Next, they will proceed to the application form, through which they will submit additional information that competitive Sites require as part of their applications, such as resume, transcripts, and contact information for their references. PIs and other authorized staff will use the system to provide information needed by prospective applicants (such as the application deadline), retrieve applicant information, record application decisions and participation status among admitted applicants, and produce reports of data submitted by applicants to their Sites.

2. Gathering program experiences and satisfaction. After participating in the NSF program, participants will be administered an exit survey to capture program experiences and participants' attitudes and opinions.

3. Obtaining and integrating educational and employment information. Following a sample of students who had used the predecessor system (REU data system) to apply to the NSF award, this study will do the following:

- Obtain information on educational outcomes from administrative data (National Student Clearinghouse) that NSF can purchase at low cost to the government and no burden to students
- Administer a short survey to obtain information on employment outcomes
- Obtain information on research productivity outcomes (such as publications or patents) from Web of Science, Scopus, and the United States Patent and Trademark Office. (NSF already subscribes to these administrative databases, so they are accessible through NSF systems.)

4. Conducting usability testing and gathering user feedback. This testing will focus on new system enhancements or functionality and seeks to obtain in-depth feedback from users on the common registration form, additional application requirements, and data reports available.

*Estimate of Burden:* At present, most education and training opportunities

funded by NSF use applications that are submitted directly to each Site, if such applications are required as is the case with the REU Sites program. Sites might run competitive and noncompetitive applications to select their program participants. We estimate that individuals applying for noncompetitive Sites will spend 3.25 hours submitting information through the ETAP system; for competitive Sites, this estimate is 7 hours. We estimate that individuals writing letters of reference for students will spend 0.5 hours drafting a letter in support of a student's application to a competitive Site. We estimate that PIs (or their designated users) will spend 4.7 hours using the system to track and manage applications to their Site.

*Respondents:* Individuals.

*Estimated Number of Respondents:* 66,499.

*Estimated Total Annual Burden on Respondents:* 146,710 hours.

*Frequency of Responses:* Three rounds of data collection.

Dated: June 28, 2021.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2021-14108 Filed 6-30-21; 8:45 am]

**BILLING CODE 7555-01-P**

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## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 14, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 196 to Competitive Product List*. Documents are available at

[www.prc.gov](http://www.prc.gov), Docket Nos. MC2021-102, CP2021-105.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2021-14022 Filed 6-30-21; 8:45 am]

**BILLING CODE 7710-12-P**

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## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Sean Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 16, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 707 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2021-103, CP2021-106.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2021-14023 Filed 6-30-21; 8:45 am]

**BILLING CODE 7710-12-P**

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## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Sean Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 25, 2021, it filed with the Postal Regulatory



Commission a *USPS Request to Add Priority Mail Contract 708 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2021–105, CP2021–107.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2021–14024 Filed 6–30–21; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of required notice:* July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 14, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 195 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2021–101, CP2021–104.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2021–14021 Filed 6–30–21; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92266; File No. 4–698]

### Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed Amendment to the National Market System Plan Governing the Consolidated Audit Trail

June 25, 2021.

#### I. Introduction

On December 18, 2020, the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the

Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”):<sup>1</sup> BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants,” “self-regulatory organizations,” or “SROs”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>2</sup> and Rule 608 thereunder,<sup>3</sup> a proposed amendment (“Proposed Amendment”) to the CAT NMS Plan that would authorize CAT LLC to revise the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement to insert limitation of liability provisions. The Proposed Amendment was published for comment in the **Federal Register** on January 6, 2021.<sup>4</sup>

On April 6, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Amendment.<sup>5</sup> Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of the publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants

<sup>1</sup> The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

<sup>2</sup> 15 U.S.C. 78k–1(a)(3).

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 90826 (December 30, 2020), 86 FR 591 (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698.htm>.

<sup>5</sup> See Exchange Act Release No. 91487 (April 6, 2021), 86 FR 19054 (April 12, 2021).

consent to a longer period.<sup>6</sup> The 180th day after publication of the Notice for the Proposed Amendment is July 5, 2021. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>7</sup> the Commission designates September 3, 2021, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment (File No. 4–698).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–14012 Filed 6–30–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34319]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 25, 2021.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2021. A copy of each application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of

<sup>6</sup> 17 CFR 242.608(b)(2)(i).

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 200.30–3(a)(85).

service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel’s Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel’s Office, 100 F Street NE, Washington, DC 20549–8010.

**Bluerock Institutional High Income Credit Fund LLC. [File No. 811–23495]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 4, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of approximately \$20,000 incurred in connection with the reorganization were paid by the applicant’s investment advisor.

*Filing Dates:* The application was filed on March 4, 2021 and amended on June 11, 2021.

*Applicant’s Address:* [Cassandra.Borchers@thompsonhine.com](mailto:Cassandra.Borchers@thompsonhine.com).

**IVA Fiduciary Trust [File No. 811–22211]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 19, 2021, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$2,383,799 incurred in connection with the liquidation were paid by the applicant and the applicant’s investment advisor.

*Filing Date:* The application was filed on May 24, 2021.

*Applicant’s Address:* [Jon-Luc.Dupuy@klgates.com](mailto:Jon-Luc.Dupuy@klgates.com).

**Transamerica Separate Account R3 [File No. 811–22407]**

*Summary:* Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on March 1, 2021 and amended on June 4, 2021.

*Applicant’s Address:* [kcarpenter@wiltonre.com](mailto:kcarpenter@wiltonre.com).

**USCA Fund Trust [811–23164]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Trust for Advised Portfolios, and on December 18, 2020 made a final distribution to its shareholders based on net asset value. Expenses of \$120,683.58 incurred in connection with the reorganization were paid by the applicant’s investment adviser and the acquiring fund’s investment adviser.

*Filing Dates:* The application was filed on March 1, 2021 and amended on May 18, 2021, and June 17, 2021.

*Applicant’s Address:* [Latashia.Love@thompsonhine.com](mailto:Latashia.Love@thompsonhine.com).

**Van Kampen Municipal Opportunity High Income Fund [811–22308]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on November 23, 2020 and amended on March 25, 2021.

*Applicant’s Address:* [Taylor.Edwards@invesco.com](mailto:Taylor.Edwards@invesco.com).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–14006 Filed 6–30–21; 8:45 am]

**BILLING CODE 8011–01–P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–92268; File No. SR–CboeBZX–2021–036]**

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Exclude a National Best Bid or Offer From the Calculation of the BZX Official Closing Price, as Provided in Rule 11.23(c)(2)(B)(ii)(b), That Is Outside the Bands Provided Under the Plan To Address Extraordinary Market Volatility**

June 25, 2021.

On April 29, 2021, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to exclude a National Best Bid or Offer<sup>3</sup> (“NBBO”) from the calculation of the BZX Official Closing Price, as provided in Rule 11.23(c)(2)(B)(ii)(b), that is outside the bands provided under the Plan to Address Extraordinary Market Volatility (“Limit Up-Limit Down” or “LULD” Plan).<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on May 18, 2021.<sup>5</sup>

Section 19(b)(2) of the Act<sup>6</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice for this proposed rule change is July 2, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission designates August 16, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2021–036).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–14013 Filed 6–30–21; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See BZX Rule 1.5(o).

<sup>4</sup> See Securities Exchange Act No. 88704 (April 21, 2020) 85 FR 23383 (April 27, 2020) (File No. 4–634) (Amendment No. 20 Approval Order).

<sup>5</sup> See Securities Exchange Act Release No. 91875 (May 12, 2021), 86 FR 26982 (May 18, 2021) (SR–CboeBZX–2021–036) (“Notice”).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 200.30–3(a)(31).

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #16934 and #16935;  
Kentucky Disaster Number KY-00085]

**Presidential Declaration Amendment of  
a Major Disaster for Public Assistance  
Only for the Commonwealth of  
Kentucky**

**AGENCY:** U.S. Small Business  
Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA-4595-DR), dated 04/23/2021.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 02/27/2021 through 03/14/2021.

**DATES:** Issued on 06/25/2021.

*Physical Loan Application Deadline Date:* 06/22/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/24/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 04/23/2021, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Ballard.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2021-14041 Filed 6-30-21; 8:45 am]

**BILLING CODE 8026-03-P**

**SMALL BUSINESS ADMINISTRATION**

**Data Collection Available for Public  
Comments**

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB), for the

collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each collection of information before submission to OMB and to allow 60 days for public comment in response to the notice. This information collection is currently approved under emergency procedures, which includes waiver of that notice. This publication complies with the PRA requirement to publish the waived notice as a prerequisite to requesting standard review and approval from OMB.

**DATES:** Submit comments on or before August 30, 2021.

**ADDRESSES:** Send all comments related to this **Federal Register** Notice electronically to [7apaycheckloanprogramquestions@sba.gov](mailto:7apaycheckloanprogramquestions@sba.gov), with the Subject Line: "SBA Form 3511 Comments."

**FOR FURTHER INFORMATION CONTACT:**

Mary Frias, Loan Specialist, at [mary.frias@sba.gov](mailto:mary.frias@sba.gov); 202-401-8234, or Curtis B. Rich, Management Analyst, 202-205-7030; [curtis.rich@sba.gov](mailto:curtis.rich@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, authorizes SBA to guarantee loans made by banks or other financial institutions under a new temporary 7(a) program titled the "Paycheck Protection Program" ("PPP") to small businesses, certain non-profit organizations, veterans' organizations, Tribal business concerns, independent contractors and self-employed individuals adversely impacted by the Coronavirus Disease (COVID-19) Emergency. This authority initially expired on August 8, 2020. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Public Law 116-260, renewed SBA's authority to make PPP loans until March 31, 2021, and added authority for Second Draw PPP Loans under § 7(a)(37) of the Small Business Act. The program authority was further extended until June 30, 2021, by the PPP Extension Act of 2021, Public Law 117-6.

When they applied for a PPP loan, Borrowers with affiliates, as defined in SBA's regulations at 13 CFR 121.301(f), were required to disclose such affiliation and certify that they were eligible to receive the loan under the SBA's rules in effect at the time the application was submitted. During any review of a PPP loan, SBA will be evaluating the borrower's eligibility certification, including its compliance with size and affiliation requirements. If

SBA determines that additional information is necessary to evaluate the borrower's eligibility certification, SBA uses this information collection (SBA Form 3511, Affiliation Worksheet) to collect that supplemental information from the borrower.

On December 14, 2020, SBA received approval from OMB to collect the information using Form 3511. On December 27, 2020, the Economic Aid Act was enacted, which among other things, revised certain PPP requirements governing borrower eligibility. On March 11, 2021, the American Rescue Plan Act (ARPA), Public Law 117-2, was enacted, which among other things, also expanded eligibility for First and Second Draw PPP Loans, revised the size standard calculation for certain businesses to be on a per physical location basis, and added affiliation waivers for certain businesses and organizations. As a result, SBA is making the following substantive revisions to Form 3511: (a) Adding two additional affiliation waivers to the table in Part B, Section I for eligible news organizations and internet-only publishing organizations and adding a new note to this section stating that the same affiliation waivers apply to First Draw and Second Draw PPP Loans; (b) adding language to Section II stating that only the employee-based size standard is applicable to Second Draw PPP Loans and adding a new note stating the applicable size standards for Second Draw PPP Loans; (c) revising the note explaining the size standards applicable to First Draw PPP Loans; and (d) adding language to notes 9-12, which explain the bases of affiliation, to provide guidance to assist nonprofit organizations in applying the affiliation rules. Finally, SBA is revising the format of the form by changing the footnotes to endnotes to prevent the tables from breaking across pages and to improve readability of the form. SBA requested emergency approval of these revisions to ensure affected borrowers have the information necessary to make informed decisions. SBA invites the public to provide comments on this information collection by the deadline stated above. Based on comments received, the Agency will make further revisions, if necessary. (a) *Solicitation of Public Comments:* SBA is requesting comments on (i) Whether the collection of information is necessary for the agency to properly perform its functions; (ii) whether the burden estimates are accurate; (iii) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information

technology; and (iv) whether there are ways to enhance the quality, utility, and clarity of the information.

(b) *Summary of Proposed Information Collection:*

*Title:* Affiliation Worksheet.

*Form Number:* SBA Form 3511.

*OMB Control Number:* 3245-0416.

*Description of respondents:* Paycheck Protection Program Borrowers and Lenders.

*Estimated number of respondents (Borrowers):* 37,500.

*Estimated time per response:* 45 minutes.

*Estimated number of respondents (Lenders):* 5,000.

*Estimated time per response:* 15 minutes.

*Total estimated annual responses:* 42,500.

*Total Estimated Annual Hour Burden:* 37,500 hours.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2021-14118 Filed 6-30-21; 8:45 am]

**BILLING CODE 8026-03-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16876 and #16877; Texas Disaster Number TX-00591]

### Presidential Declaration Amendment of a Major Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 5.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA-4586-DR), dated 02/19/2021.

*Incident:* Severe Winter Storms.

*Incident Period:* 02/11/2021 through 02/21/2021.

**DATES:** Issued on 06/24/2021.

*Physical Loan Application Deadline Date:* Filing Period for counties listed below ends on 08/23/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* Filing Period for counties listed below ends on 03/24/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster

declaration for the State of Texas, dated 2/19/2021, is hereby amended to include the counties listed below.

Please contact the SBA disaster assistance customer service center by email at [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov) or by phone at 1-800-659-2955 to request an application. Applications for physical damages may be filed until 08/23/2021 and applications for economic injury may be file until 03/24/2022.

*Primary Counties (Physical Damage and Economic Injury Loans):* Kerr, Lamar, Shackelford.

*Contiguous Counties (Economic Injury Loans Only):*

Oklahoma: Choctaw.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2021-14038 Filed 6-30-21; 8:45 am]

**BILLING CODE 8026-03-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. FHWA-2021-0009]

#### Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Highway Project in Arkansas

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of Intent To Prepare an Environmental Impact Statement.

**SUMMARY:** FHWA, in coordination with the Arkansas Department of Transportation (ARDOT), is issuing this Notice of Intent (NOI) to solicit comments and advise the public, agencies, and stakeholders of an Environmental Impact Statement (EIS) that will be prepared to study the effects of a highway project under consideration for the Highway 67 corridor in Clay, Greene, Lawrence, and Randolph counties, Arkansas. This notice contains a summary of the information as required in the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations. This NOI should be reviewed together with the Supplementary NOI Information document which contains important details about the proposed project.

**DATES:** Comments on the NOI or the Supplementary NOI Information

document must be received on or before August 2, 2021.

**ADDRESSES:** This NOI and the Supplementary NOI Information document are available in the docket referenced above at <http://www.regulations.gov> and on the project website located at [Future57.transportationplanroom.com](http://Future57.transportationplanroom.com). The Supplementary NOI Information document also will be mailed upon request. Interested parties are invited to submit comments by any of the following methods:

*Website:* For access to the documents, go to the Federal eRulemaking Portal located at <http://www.regulations.gov> or the project website located at [Future57.transportationplanroom.com](http://Future57.transportationplanroom.com). Follow the online instructions for submitting comments.

*Fax:* Randal Looney at 501-324-6423.

*Mailing address or for hand delivery or courier:* Federal Highway Administration, Arkansas Division, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201.

*Email address:* [Randal.Looney@dot.gov](mailto:Randal.Looney@dot.gov)

All submissions should include the agency name and the docket number that appears in the heading of this Notice. All comments received will be posted without change to <http://www.regulations.gov> or [Future57.transportationplanroom.com](http://Future57.transportationplanroom.com), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to get on the project mailing list, contact Mr. Randal Looney, Environmental Coordinator, Federal Highway Administration, Arkansas Division Office, 700 West Capitol Avenue, Suite 3130, Little Rock, AR 72201-3298, email: [randal.looney@dot.gov](mailto:randal.looney@dot.gov), (501) 324-6430; or Mr. Bill McAbee, Environmental Project Manager, Garver, 4701 Northshore Drive, North Little Rock, Arkansas 72118, email: [WCMcAbee@GarverUSA.com](mailto:WCMcAbee@GarverUSA.com), (501) 376-3633.

**SUPPLEMENTARY INFORMATION:** The environmental review of transportation alternatives for the Highway 67 corridor will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), 23 U.S.C. 139, CEQ regulations implementing NEPA (40 CFR 1500-1508), FHWA regulations implementing NEPA (23 CFR 771.101-771.139), and all applicable Federal, State, and local governmental laws and regulations.

The EIS will evaluate the environmental effects of all reasonable project alternatives and determine the

potential impacts to social, economic, natural, and physical environmental resources associated with these alternatives. Federal agencies will work together to identify and mitigate any potentially significant impacts through the NEPA process. All reasonable alternatives, including new location alignments and improvements to existing Highway 67, will be considered, screened, and carried forward for detailed analysis in the Draft Environmental Impact Statement (DEIS) based on their ability to address the project's purpose and need while minimizing adverse impacts to the natural and social environments.

The project team sent letters describing the proposed NEPA study and soliciting input to the appropriate federal, tribal, state, and local agencies who have expressed or are known to have an interest or legal role in this project. Additional comments from the public, interest groups, private organizations, and other agencies will be solicited through an additional public hearing for the DEIS. The project is needed because there is a gap in the system linkage that diminishes connectivity and mobility of the National Highway System. Additionally, there is a lack of reliable transportation infrastructure to support economic development and a need to enhance resiliency to extreme weather events along the route. Furthermore, Federal legislation designated this high priority corridor as future Interstate Route 57 (I-57). The project's purpose is to develop an interstate highway system that addresses the above-described needs while minimizing the negative impacts to the natural and social environment.

All build alternatives begin at Walnut Ridge, Arkansas and end at the Arkansas-Missouri state line, a distance of approximately 42 miles. There are currently three build alternatives and the no-build alternative under consideration. The build alternatives include Alternative 1, an evaluation of improvements to existing Highway 67 with new location bypasses around the towns of Pochahontas and Corning; Alternative 2, which generally lies between Highway 67 and the Dave Donaldson Black River Wildlife Management Area (DDWMA) turning north on the east side of Corning up to the Arkansas-Missouri state line on all-new location; and Alternative 3, which generally parallels the Highway 90 corridor east of the DDWMA until reaching the town of Knobel where the study corridor turns north passing east of Corning and to the Arkansas-Missouri state line and is all on new location. Three approximately 1.7-mile

alternatives provide the final connection between the main alternatives and the Arkansas-Missouri state line. These "connector" alternatives are named A, B, and C: Alternative A lies to the east of Highway 67 on new location, Alternative B improves existing Highway 67, and Alternative C lies to the west of Highway 67 on new location. The Missouri Department of Transportation (MoDOT) is a cooperating agency on this project and is working closely with ARDOT on the connector location because this will determine the southern terminal for the MoDOT section of future I-57. The No-build Alternative will not meet the purpose and need but is retained throughout the study process to help evaluate the positive and negative impacts of the build alternatives. Maps of the study area and alternatives are included in the Supplementary NOI Information document and on the project website interactive map.

Anticipated environmental constraints for the project include potential impacts to the DDWMA, the Black and Current Rivers, vegetated and farmed wetlands, floodplains, threatened and endangered species and their habitat, cultural resources, residential homes, businesses, and farmlands. Alternative 1 has the greatest potential to impact homes, businesses, and cultural resources due to improvements to the already developed Highway 67 corridor. Alternatives 2 and 3 are on new location with minor impacts to the human environment but have the greatest potential impact on farmlands and farmed wetlands. Preliminary estimates of possible impacts can be seen in the Supplementary NOI Information document.

Permits and authorizations anticipated for the project include a U.S. Army Corps of Engineers (USACE) Section 404 of the Clean Water (33 U.S.C. 1344) and Section 10 (33 U.S.C. 403) of the Rivers and Harbors Act standard (individual) permit for wetland/stream impacts and impacts to navigable waters, and Section 408 (U.S.C. 33 U.S.C. 408) approval for Civil Works project impacts such as levees.

Formal coordination with the USACE began in November 2020 when they accepted the responsibility to be a cooperating agency. A Section 401 Water Quality Certification from the Arkansas Department of Energy and Environment (ADEE) will be required for potential impacts to surface waters. Formal coordination began in May 2020 when ADEE accepted the responsibility to be a participating agency. Consultation with the U.S. Fish and

Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act (16 U.S.C. Section 1536), will be required for biological assessments and threatened and endangered species surveys. Formal coordination with the USFWS began in May 2020 when they accepted the responsibility to be a cooperating agency. A Request for Technical Assistance for USFWS was completed in early 2020 and a preliminary plan for habitat resource evaluations and bat and mussel surveys was recently submitted to the USFWS for review. Consultation with the State Historic Preservation Officer (SHPO) for compliance with Section 106 regulations will be required for historical and archeological resources potentially impacted. Formal coordination with the SHPO began in January 2021 when they accepted the responsibility to be a participating agency.

Early scoping for this EIS study started with the local official and public meetings held in August and September 2020 and it will continue for 30 days after publication of this NOI. Project scoping also includes the previous studies' public meetings as described below. In 1996, ARDOT completed a planning study specifically for the current project area. In 2015, ARDOT conducted a second planning study and included substantial public and local official input and consideration of environmental impacts. The 2015 planning study recommendations are the basis for the preliminary range of alternatives currently under consideration. In August 2020, the project team held virtual meetings with local officials and the public and included the draft purpose and need document, three 1,000-foot-wide corridors, and other project information. The project team solicited comments on the presented materials and encouraged the public to be as detailed and specific as possible. Additional public, local official, and agency outreach will be conducted for the DEIS.

The publication date of the NOI will start a two-year time clock for the agency to reach its final decision on the project (40 CFR 1501.10(a) and (b)(2)). The schedule for completing the Draft EIS, Final EIS/Record of Decision (ROD), and permits is as follows: Draft EIS May 31, 2022; Final EIS/ROD February 28, 2023; Section 404, 408, and 10 permit—July 31, 2023; Section 401 certification July 31, 2023; Section 106 consultation May 31, 2022; Section 7 consultation June 15, 2022.

With this Notice, FHWA and ARDOT request and encourage State, Tribal, and local government agencies, and the

general public, to review the complete NOI (including the Supplementary NOI Information document) and submit comments on any aspect of the project that might benefit the project understanding. Specifically, agencies and the public are asked to identify and submit potential alternatives for consideration and information such as anticipated significant issues or environmental impacts and analyses relevant to the proposed action for consideration by the lead and cooperating agencies in developing the Draft EIS. There are several methods to submit comments as described in the **ADDRESSES** section of this Notice. Any questions concerning this proposed action should be directed to FHWA at the physical address, email address, or phone number provided in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 42 U.S.C. 4321 *et seq.*; 23 CFR part 771.

**Vivien N. Hoang,**

*Division Administrator, Little Rock, Arkansas.*

[FR Doc. 2021-14062 Filed 6-30-21; 8:45 am]

**BILLING CODE 4910-22-P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The 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 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](http://www.treasury.gov/ofac)).

#### Notice of OFAC Action(s)

A. On June 21, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

**BILLING CODE 4810-AL-P**

**Individuals**

1. ASTREIKA, Alyaksandr Vyachaslavavich (Cyrillic: АСТРЭЙКА, Аляксандр Вячаслававіч) (a.k.a. ASTREIKA, Aliaksandr; a.k.a. ASTREIKA, Aliaksandr Viachaslavavich; a.k.a. ASTREIKO, Aleksandr (Cyrillic: АСТРЕЙКО, Александр); a.k.a. ASTREIKO, Aleksandr Vyacheslavovich (Cyrillic: АСТРЕЙКО, Александр Вячеславович); a.k.a. ASTREIKO, Alexander; a.k.a. ASTREIKO, Alexander Viacheslavovich), Brest Oblast, Belarus; DOB 22 Dec 1971; POB Kapyl, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13405 of June 16, 2006, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus," 71 FR 35485, 3 CFR 13405 (E.O. 13405) for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

2. KARPIANKOU, Mikalai (Cyrillic: КАРПЯНКОЎ, Мікалай) (a.k.a. KARPENKOV, Nikolai (Cyrillic: КАРПЕНКОВ, Николай); a.k.a. KARPENKOV, Nikolai Nikolaevich (Cyrillic: КАРПЕНКОВ, Николай Николаевич); a.k.a. KARPIANKOU, Mikalay; a.k.a. KARPYANKOU, Mikalay), Minsk, Belarus; DOB 06 Sep 1968; POB Minsk, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

3. EISMANT, Natallia Mikalaeuna (Cyrillic: ЭЙСМАНТ, Наталля Мікалаеўна) (a.k.a. EISMANT, Natallia; a.k.a. EISMONT, Natalia Nikolayevna (Cyrillic: ЭЙСМОИТ, Наталья Николаевна); a.k.a. EISMONT, Natalya), Minsk, Belarus; DOB 16 Feb 1984; POB Minsk, Belarus; nationality Belarus; Gender Female; National ID No. 4160284A004PB3 (Belarus) (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(D) of E.O. 13405 for having materially assisted, sponsored, or provided financial, material, or technological support for, or



goods or services in support of any person listed in or designated pursuant to E.O. 13405.

4. KACHANAVA, Natallia Ivanauna (Cyrillic: КАЧАНАВА, Наталля Іванаўна) (a.k.a. KOCHANOVA, Natalia Ivanovna (Cyrillic: КОЧАНОВА, Наталья Ивановна); a.k.a. KOCHANOVA, Natalya), Minsk, Belarus; DOB 25 Sep 1960; POB Polotsk, Vitebsk Oblast, Belarus; nationality Belarus; Gender Female (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to E.O. 13405.

5. DARASHENKA, Volha Leanidauna (a.k.a. DARASHENKA, Olga Leanidauna; a.k.a. DARASHENKA, Volga Leanidauna (Cyrillic: ДАРАШЭНКА, Вольга Леанідаўна); a.k.a. DARASHENKA, Volha Leanidauna; a.k.a. DOROSHENKO, Olga; a.k.a. DOROSHENKO, Olga Leonidovna (Cyrillic: ДОРОШЕНКО, Ольга Леонидовна)), Mogilev Oblast, Belarus; DOB 1976; nationality Belarus; Gender Female (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

6. GURZHY, Andrei Anatoljevich (a.k.a. GURZHII, Andrei Anatolevich; a.k.a. GURZHIY, Andrey Anatolievich (Cyrillic: ГУРЖИЙ, Андрей Анатольевич); a.k.a. GURZHY, Andrei; a.k.a. GURZHY, Andrei Anatolievich (Cyrillic: ГУРЖЫ, Андрэй Анатольевич); a.k.a. HURZHY, Andrei Anatolevich), Homel Oblast, Belarus; DOB 10 Oct 1975; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

7. KALINOWSKI, Siarhei Aliaksiejevich (a.k.a. KALINOUSKI, Siarhei Aliakseevich (Cyrillic: КАЛІНОЎСКИ, Сяргей Аляксеевіч); a.k.a. KALINOVSKI, Sergei Alekseevich; a.k.a. KALINOVSKIY, Sergey Alekseevich (Cyrillic: КАЛІНОВСКИЙ, Сергей Алексеевич); a.k.a. KALINOVSKY, Sergei), Brest Oblast, Belarus; DOB 03 Jan 1969; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

8. KATSUBA, Sviatlana Piatrowna (a.k.a. KACUBA, Sviatlana; a.k.a. KATSUBA, Sviatlana Piatrouna (Cyrillic: КАЦУБА, Святлана Пятроўна); a.k.a. KATSUBO, Svetlana; a.k.a. KATSUBO, Svetlana Petrovna (Cyrillic: КАЦУБО, Светлана Петровна)), Homel Oblast, Belarus; DOB 06 Aug 1959; POB Podilsk, Odessa Oblast, Ukraine; nationality Belarus; Gender Female (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

9. LASIAKIN, Aliaksandr Mikhajlavich (a.k.a. LASIAKIN, Aliaksandr Mikhailavich; a.k.a. LASYAKIN, Aliaksandr Mikhailavich (Cyrillic: ЛАСЯКИН, Аляксандр Міхайлавіч); a.k.a. LOSIAKIN, Aleksandr Mikhailovich; a.k.a. LOSYAKIN, Aleksandr; a.k.a. LOSYAKIN, Alexander; a.k.a. LOSYAKIN, Alexander Mikhailovich (Cyrillic: ЛОСЯКИН, Александр Михайлович)), Vitebsk, Belarus; DOB 21 Jul 1957; POB Novaya Belitsa, Vitebsk Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

10. PLYSHEWSKI, Ihar Anatoljevich (a.k.a. PLYSHEUSKI, Igar Anatolievich (Cyrillic: ПЛЫШЭЎСКИ, Ігар Анатольевіч); a.k.a. PLYSHEUSKI, Ihar; a.k.a. PLYSHEUSKI, Ihar Anatolevich; a.k.a. PLYSHEVSKII, Igor Anatolevich; a.k.a. PLYSHEVSKIY, Ihor Anatolievich (Cyrillic: ПЛЫШЕВСКИЙ, Игорь Анатольевич); a.k.a. PLYSHEVSKY, Igor), Minsk, Belarus; DOB 19 Feb 1979; POB Lyuban, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

11. RAKHMANAVA, Maryna Jurjevna (a.k.a. RAKHMANAVA, Marina Yureuna (Cyrillic: РАХМАНАВА, Марына Юреўна); a.k.a. RAKHMANAVA, Maryna Iureuna; a.k.a. RAKHMANOVA, Marina; a.k.a. RAKHMANOVA, Marina Iurevna; a.k.a. RAKHMANOVA, Marina Yurievna (Cyrillic: РАХМАНОВА, Марина Юрьевна)), Hrodna Oblast, Belarus; DOB 26 Sep 1970; nationality Belarus; Gender Female (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

12. TSELIKAVIETS, Iryna Aliaksandrauna (a.k.a. TSELIKAVETS, Iryna Aliaksandrauna (Cyrillic: ЦЭЛІКАВЕЦ, Ірына Аляксандраўна); a.k.a. TSELIKAVETS, Iryna Aliaksandrauna; a.k.a. TSELIKOVEC, Iryna Alexandrovna (Cyrillic: ЦЕЛИКОВЕЦ, Ирина Александровна); a.k.a. TSELIKOVETS, Iryna; a.k.a. TSELIKOVETS, Iryna Aleksandrovna; a.k.a. TSELIKOVETS, Iryna), Minsk Oblast, Belarus; DOB 02 Nov 1976; POB Zhlobin, Belarus; nationality Belarus; Gender Female (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

13. ZUBKOV, Sergei Yevgenevich (Cyrillic: ЗУБКОВ, Сергей Евгеньевич) (a.k.a. ZUBKOU, Siarhei Yaugenavich (Cyrillic: ЗУБКОЎ, Сяргей Яўгенавіч)), Minsk, Belarus; DOB 21 Aug 1975; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

14. HRYB, Mikhail (a.k.a. GRIB, Mikhail (Cyrillic: ГРИБ, Михаил); a.k.a. GRIB, Mikhail Vyacheslavovich (Cyrillic: ГРИБ, Михаил Вячеславович)), Minsk, Belarus; DOB 29 Jul 1980; POB Minsk, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

15. SHVED, Andrei Ivanavich (Cyrillic: ШВЕД, Андрэй Іванавіч) (a.k.a. SHVED, Andrei Ivanovich (Cyrillic: ШВЕД, Андрей Иванович); a.k.a. SHVED, Andrey Ivanovich), Belarus; DOB 21 Apr 1973; POB Glushkovichi, Lelchitsy District, Gomel Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

16. TSERTSEL, Ivan Stanislavavich (Cyrillic: ЦЕРЦЕЛЬ, Іван Станіслававіч) (a.k.a. TERTEL, Ivan Stanislavavich (Cyrillic: ТЭРТЭЛЬ, Іван Станіслававіч); a.k.a. TERTEL, Ivan Stanislavovich (Cyrillic: ТЕРТЕЛ, Иван Станиславович)), Minsk, Belarus; DOB 08 Sep 1966; POB Privalka, Grodno Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

## Entities

1. DIRECTORATE OF INTERNAL AFFAIRS OF THE BREST OBLAST EXECUTIVE COMMITTEE (Cyrillic: УПРАВЛЕНИЕ ВНУТРЕННИХ ДЕЛ БРЕСТСКОГО ОБЛИСПОЛКОМА) (a.k.a. BRESTOBLISPOLKOM DEPARTMENT OF INTERNAL AFFAIRS; a.k.a. BRESTOBLISPOLKOM UVD (Cyrillic: УВД БРЕСТОБЛИСПОЛКОМА); a.k.a. DEPARTMENT OF INTERNAL AFFAIRS OF BREST OBLAST EXECUTIVE COMMITTEE; a.k.a. UVD OF THE BREST OBLAST EXECUTIVE COMMITTEE (Cyrillic: УВД БРЕСТСКОГО ОБЛИСПОЛКОМА)), 28, Communist str., Brest 224000, Belarus; Registration Number 200127206 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

2. INTERNAL TROOPS OF THE MINISTRY OF INTERNAL AFFAIRS OF THE REPUBLIC OF BELARUS (a.k.a. INTERNAL TROOPS OF THE MINISTRY OF INTERNAL AFFAIRS (Cyrillic: ВНУТРЕННИЕ ВОЙСКА МИНИСТЕРСТВА ВНУТРЕННИХ ДЕЛ)), 4 Gorodskoi Val, Minsk 220030, Belarus (Cyrillic: ул. Городской Вал, 4, Минск 220030, Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

3. AKRESTSINA DETENTION CENTER (a.k.a. AKRESCINA JAIL; a.k.a. AKRESTSINA; a.k.a. AKRESTSINA JAIL; a.k.a. CENTER FOR THE ISOLATION OF LAWBREAKERS OF THE MINSK GUV D; a.k.a. CENTRE FOR ISOLATION OF OFFENDERS OF THE CHIEF DIRECTORATE OF THE INTERIOR OF MINSK EXECUTIVE COMMITTEE; a.k.a. INSTITUTION CENTER FOR THE ISOLATION OF LAWBREAKERS OF THE MAIN INTERNAL AFFAIRS DIRECTORATE OF THE MINSK CITY EXECUTIVE COMMITTEE; a.k.a. OKRESTINA; a.k.a. OKRESTINA STREET DETENTION FACILITY; a.k.a. TSENTR IZALYATSYI PRAVANARUSHALNIKAU HUUS MINHARVYKANKAMA (Cyrillic: ЦЭНТР ІЗАЛЯЦЫІ ПРАВАПАРУШАЛЬНІКАЎ ГУУС МІНГАРВЫКАНКАМА); a.k.a. TSENTR IZOLYATSII PRAVONARUSHITELEI GUV D MINGORISPOLKOMA (Cyrillic: ЦЕНТР ІЗОЛЯЦІІ ПРАВОНАРУШИТЕЛЕЙ ГУВД МІНГОРИСПОЛКОМА); a.k.a. UCHREZHDENIYE TSENTR IZOLYATSII PRAVONARUSHITELEI GLAVNOVO UPRAVLENIYA VNUTRENNIKH DEL MINSKOVO GORODSKOVO ISPOLNITELNOVO KOMITETA (Cyrillic: УЧРЕЖДЕНИЕ ЦЕНТР ІЗОЛЯЦІІ ПРАВОНАРУШИТЕЛЕЙ ГЛАВНОГО УПРАВЛЕНИЯ ВНУТРЕННИХ ДЕЛ МИНСКОГО ГОРОДСКОГО ИСПОЛНИТЕЛЬНОГО КОМИТЕТА); a.k.a. USTANOVA TSENTR IZALYATSYI PRAVANARUSHALNIKAU HALOUNAHA UPRAULENIYA UNUTRANYKH SPRAU MINSKANA GARADSKONA VYKANAUCHANA KOMITETA (Cyrillic: УСТАНОВА ЦЭНТР ІЗАЛЯЦЫІ ПРАВАПАРУШАЛЬНІКАЎ ГАЛОЎНАГА ЎПРАЎЛЕННЯ ЎНУТРАНЬХ СПРАЎ МІНСКАГА ГАРАДСКОГА ВЫКАНАЎЧАГА КАМІТЭТА)), per. 1-st Okrestina, d. 36, Minsk 220028, Belarus (Cyrillic: пер. 1-й Окрестина, д. 36, г. Минск 220028, Belarus); Registration Number 191291828 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(D) of E.O. 13405 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, human rights abuses related to political repression in Belarus.

4. STATE SECURITY COMMITTEE OF THE REPUBLIC OF BELARUS (a.k.a. BELARUSIAN KGB; a.k.a. BELARUSIAN STATE SECURITY COMMITTEE; a.k.a. КАМІТЕТ ДЗЯРЖАЎНАЙ БЯСПЕКІ РЭСПУБЛІКІ БЕЛАРУСЬ); (Cyrillic: КАМІТЭТ ДЗЯРЖАЎНАЙ БЯСПЕКІ РЭСПУБЛІКІ БЕЛАРУСЬ); a.k.a. КОМИТЕТ ГОСУДАРСТВЕННОЙ БЕЗОПАСНОСТИ РЕСПУБЛИКИ

BELARUS (Cyrillic: КОМИТЕТ ГОСУДАРСТВЕННОЙ БЕЗОПАСНОСТИ РЕСПУБЛИКИ БЕЛАРУСЬ)), Nezalezhnasti Avenue, 17, Minsk 220030, Belarus; Komsomolskaya str., 30, Minsk 220030, Belarus; Target Type Government Entity [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

5. MAIN DIRECTORATE FOR COMBATING ORGANIZED CRIME AND CORRUPTION OF THE MVD OF THE REPUBLIC OF BELARUS (Cyrillic: ГЛАВНОЕ УПРАВЛЕНИЕ ПО БОРЬБЕ С ОРГАНИЗОВАННОЙ ПРЕСТУПНОСТЬЮ И КОРРУПЦИЕЙ МВД РЕСПУБЛИКИ БЕЛАРУСЬ) (a.k.a. GUBOPIK (Cyrillic: ГУБОПИК)), ul. Revolyutsionnaya, 3, Minsk, Belarus; Organization Established Date 28 Mar 1991; Target Type Government Entity [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

B. On June 28, 2021, OFAC updated the entry on the SDN List for the following person, whose property and

interests in property subject to U.S. jurisdiction continue to be blocked

under the relevant sanctions authority listed below.

### Individual

1. SLIZHEVSKY, Oleg Leonidovich (a.k.a. SLIZHEUSKI, Aleh Leanidavich; a.k.a. SLIZHEVSKI, Oleg Leonidovich); nationality Belarus; citizen Belarus; Head of the Public Associations Department, Ministry of Justice (individual) [BELARUS].

-to-

SLIZHEVSKY, Oleg Leonidovich (Cyrillic: СЛИЖЕВСКИЙ, Олег Леонидович) (a.k.a. SLIZHEUSKI, Aleh Leanidavich (Cyrillic: СЛИЖЭЎСКИ, Алєг Леанідавіч); a.k.a. SLIZHEVSKI, Oleg Leonidovich; a.k.a. SLIZHEVSKIY, Oleg), Minsk, Belarus; DOB 16 Aug 1972; POB Hrodna, Belarus; nationality Belarus; citizen Belarus; Gender Male; Justice Minister of the Republic of Belarus (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 of June 16, 2006, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus," 71 FR 35485, 3 CFR 13405 (E.O. 13405) for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

Dated: June 28, 2021.

**Bradley T. Smith,**

*Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2021-14068 Filed 6-30-21; 8:45 am]

**BILLING CODE 4810-AL-C**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0399]

### Agency Information Collection Activity: Student Beneficiary Report— Restored Entitlement Program for Survivors (REPS)

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 30, 2021.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of

Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to [nancy.kessinger@va.gov](mailto:nancy.kessinger@va.gov). Please refer to "OMB Control No. 2900-0399" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:**

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to "OMB Control No. 2900-0399" in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** 38 U.S.C. 5101; 38 CFR 3.812.

**Title:** Student Beneficiary Report—Restored Entitlement Program for

Survivors (REPS) (VA Form 21P-8938-1).

**OMB Control Number:** 2900-0399.

**Type of Review:** Reinstatement with change of a previously approved collection.

**Abstract:** A claimant's eligibility for needs-based pension programs are determined in part by countable family income and certain deductible expenses. Restored Entitlement Program for Survivors (REPS) is a benefit payable to certain surviving spouses and dependent children of deceased Veterans who died in service prior to August 13, 1981 or died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. In these situations, VBA uses VA Form 21P-8938-1 *Student Beneficiary Report—Restored Entitlement Program for Survivors* (REPS), to verify beneficiaries receiving REPS benefits based on school-aged child status, are in fact enrolled full-time in an approved school and are otherwise eligible for continue benefits under REPS. Without this information, determination of eligibility would not be possible.

**Affected Public:** Individuals and households.

**Estimated Annual Burden:** 300 hours.

**Estimated Average Burden per Respondent:** 15 minutes.

**Frequency of Response:** Annually.

**Estimated Number of Respondents:** 1,200.

By direction of the Secretary.

**Dorothy Glasgow,**

*VA PRA Clearance Officer, (Alternate) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021-14037 Filed 6-30-21; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

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Part II

Department of the Treasury

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31 CFR Part 33

Department of Health and Human Services

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Centers for Medicare & Medicaid Services

45 CFR Parts 147, 155 and 156

Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule; Proposed Rule



**DEPARTMENT OF THE TREASURY****31 CFR Part 33****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****45 CFR Parts 147, 155 and 156**

[CMS-9906-P]

RIN 0938-AU60

**Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS. Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth proposed revised 2022 user fee rates for issuers offering qualified health plans (QHPs) through Federally-facilitated Exchanges (FFE)s and State-based Exchanges on the Federal platform (SBE-FPs); proposes repeal of separate billing requirements related to the collection of separate payments for the portion of QHP premiums attributable to coverage for certain abortion services; proposes to expand the annual open enrollment period and Navigator duties; proposes a new monthly special enrollment period for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for advance payments of the premium tax credit (APTC) and whose household income does not exceed 150 percent of the federal poverty level (FPL); proposes to repeal the recent establishment of a Direct Enrollment option for Exchanges; and proposes to modify regulations and policies related to section 1332 waivers.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by July 28, 2021.

**ADDRESSES:** In commenting, please refer to file code CMS-9906-P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following

address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9906-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9906-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Alper Ozinal, (301) 492-4178, Adrienne Patterson, (410) 786-4178, Jacquelyn Rudich, (301) 492-5211, or Nora Simmons, (410) 786-1981, for general information.

Gian Johnson, (301) 492-4323, or Meredyth Woody, (301) 492-4404, for matters related to Navigator program standards.

Robert Yates, (301) 492-5151, for matters related to the Exchange Direct Enrollment option for Federally-facilitated Exchanges, State-based Exchanges on the Federal platform, and State Exchanges.

Carly Rhyne, (301) 492-4188, or Aziz Sandhu, (301) 492-4437, for matters related to open enrollment.

Carolyn Kraemer, (301) 492-4197, for matters related to special enrollment periods for Exchange enrollment under parts 147 and 155.

Nikolas Berkobien, (989) 395-1836, for matters related to standardized options.

Aaron Franz, (410) 786-8027, or Nora Simmons, (410) 786-1981, for matters related to user fees.

Rebecca Bucchieri, (301) 492-4341, for matters related to provision of essential health benefits and separate billing and segregation of funds for abortion services.

Erika Melman, (301) 492-4348, Deborah Hunter, (410) 786-0625, or Emily Martin, (301) 492-4400, for matters related to network adequacy.

Lina Rashid, (202) 260-6098, Michelle Koltov, (301) 492-4225, or Kimberly Koch, (202) 622-0854 for matters related to section 1332 waivers.

**SUPPLEMENTARY INFORMATION: Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in

a comment. We post comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

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**I. Executive Summary**

American Health Benefit Exchanges, or "Exchanges," are entities established under the Patient Protection and Affordable Care Act (ACA)<sup>1</sup> through

<sup>1</sup> The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection

which qualified individuals and qualified employers can purchase comprehensive health insurance coverage through qualified health plans (QHPs). Many individuals who enroll in QHPs through individual market Exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums and to receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. This notice proposes rules and policies designed to promote greater access to comprehensive health insurance coverage through the Exchanges, consistent with applicable law and with the administration's policy priorities detailed in recent Presidential executive orders.

On January 28, 2021, the President issued Executive Order 14009, "Executive Order on Strengthening Medicaid and the Affordable Care Act" (E.O. 14009), which stated the Administration's policy to protect and strengthen the ACA and to make high-quality health care accessible and affordable for every American.<sup>2</sup> This Executive Order instructed the Secretary of Health and Human Services (hereinafter referred to as "the Secretary"), along with the Secretaries of the Departments of Labor and the Treasury, to review all existing regulations, guidance documents, and other agency actions to determine whether they are consistent with the aforementioned policy, and to consider whether to suspend, revise, or rescind any agency actions that are inconsistent with it.

On January 20, 2021, President Biden issued Executive Order 13985, "On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (E.O. 13985),<sup>3</sup> directing that as a policy matter, the federal government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. E.O. 13985 also directs HHS to assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.

and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the "Affordable Care Act" or "ACA."

<sup>2</sup> 86 FR 7793 (Feb. 2, 2021).

<sup>3</sup> 86 FR 7009 (Jan. 25, 2021).

Today, of the 30 million uninsured, half are people of color.<sup>4</sup> Of those that have insurance, there are frequently barriers to using insurance because of affordability concerns related to premiums, deductibles, copayments, and coinsurance, as well as challenges related to health literacy and the ability for the insured to find and access in-network providers. These barriers to using insurance are particularly problematic for those with chronic conditions and individuals with social risk factors (such as poverty, minority race and/or ethnicity, social isolation, and limited community resources),<sup>5</sup> which also includes members of underserved communities, people of color, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The COVID-19 public health emergency (PHE) has highlighted the negative effects of these circumstances as COVID-19 has unequally affected many racial and ethnic minority groups, putting them more at risk of getting sick and dying from COVID-19.<sup>6</sup>

As part of its review of regulations and policies under the Executive Orders described in the preceding paragraphs, HHS examined certain policies and requirements addressed in this proposed rule to analyze whether they are consistent with policy goals outlined in the Executive Orders, including whether they might create or perpetuate systemic barriers to obtaining health insurance coverage. The results of our examinations and analyses led to the policies and rules proposed in this rule.

In previous rulemakings, HHS established provisions and parameters to implement many ACA requirements and programs. In this proposed rule, we propose to amend and repeal some of these provisions and parameters, with a focus on making high-quality health care accessible and affordable for consumers. These proposed changes would provide consumers greater access to coverage through, for example, greater education and outreach, improve

<sup>4</sup> "Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, January–June 2020," National Center for Health Statistics, February 2021, available at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur202102-508.pdf>.

<sup>5</sup> See "Social Risk Factors and Medicare's Value-Based Purchasing Programs," HHS Office of the Secretary of Planning and Evaluation, available at <https://aspe.hhs.gov/social-risk-factors-and-medicare-value-based-purchasing-programs>.

<sup>6</sup> See Centers for Disease Control and Prevention, "Health Equity Considerations and Racial and Ethnic Minority Groups," updated April 19, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html#print>.

affordability for consumers, reduce administrative burden for issuers and consumers, and improve program integrity. As discussed more fully later in the preamble, each of these measures would strengthen the ACA or otherwise promote the policy goals outlined in the Executive Orders described above.<sup>7</sup>

We propose to amend § 147.104(b)(2) to specify that issuers are not required to provide a special enrollment period in the individual market with respect to coverage offered outside of an Exchange to qualifying individuals who would be eligible for the proposed special enrollment period triggering event at § 155.420(d)(16) described below.

We also propose to amend § 155.210(e)(9) to reinstitute previous requirements that Navigators in FFEs be required to provide consumers with information and assistance on certain post-enrollment topics, such as the Exchange eligibility appeals process, the Exchange-related components of the PTC reconciliation process, and the basic concepts and rights of health coverage and how to use it.

We also propose to remove § 155.221(j) and repeal the Exchange Direct Enrollment option which establishes a process for State Exchanges, State-based Exchanges on the Federal platform, and Federally-facilitated Exchanges to work directly with private sector entities (including QHP issuers, web-brokers, and agents and brokers) to operate enrollment websites through which consumers can apply for coverage, receive an eligibility determination from the Exchange, and purchase an individual market QHP offered through the Exchange with APTC and cost-sharing reductions (CSRs), if otherwise eligible.

For the 2022 coverage year and beyond, we propose to amend § 155.410(e) to lengthen the annual open enrollment period for coverage through all Exchanges to November 1 through January 15, as compared to the current annual open enrollment period of November 1 through December 15.

We propose to add a new paragraph at § 155.420(d)(16) to establish a monthly special enrollment period for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for APTC, and whose household income does not exceed 150 percent of the FPL, in order to provide low-income individuals who generally will have access to a

<sup>7</sup> Although many of the policies proposed in this rule support the goals outlined in recent Executive Orders, as described later in the preamble discussions related to individual proposals, each of the proposals is supported by statutory authority independent of the Executive Orders.

premium-free silver plan with a 94 percent actuarial value (AV) with more opportunities to enroll in coverage. We also propose to clarify, for purposes of the special enrollment periods provided at § 155.420(d), that a qualified individual who meets the criteria at § 155.305(f), but who qualifies for a maximum APTC amount of zero dollars, is not considered APTC eligible. This approach would ensure that § 155.420 very clearly reflects appropriate special enrollment period eligibility for qualifying individuals who qualify for a maximum APTC amount of zero dollars and for those who become eligible for APTC amounts greater than zero.

In addition, to reflect updated analysis of enrollment and the cost of expanded services offered through the Federal platform, we propose to set the 2022 user fee rate at 2.75 percent of total monthly premiums charged by the issuer for each policy under plans offered through an FFE, and 2.25 percent of the total monthly premiums charged by the issuer for each policy under plans offered through an SBE-FP (rather than 2.25 and 1.75 percent of the total monthly premiums charged by the issuer for each policy under plans offered through an FFE or SBE-FP, respectively, as finalized in part 1 of the 2022 Payment Notice final rule). These proposed 2022 user fee rates are still less than the 2021 user fees currently being collected—3.0 and 2.5 percent of the total monthly premiums charged by the issuer for each policy under plans offered through an FFE or SBE-FP, respectively.

We also propose a technical amendment to requirements at § 156.115(a)(3) pertaining to the provision of the essential health benefits (EHB), to include a cross-reference to the Public Health Service (PHS) Act to make clear that health plans subject to EHB requirements must comply with all of the requirements under Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), including any amendments to MHPAEA.

We also propose to repeal the separate billing regulation at § 156.280(e)(2), which requires individual market QHP issuers that offer coverage of abortion services<sup>8</sup> for which federal funds are prohibited to separately bill for this portion of the policy holder's premium and to instruct the policy holder to pay for the separate bill in a separate transaction. Specifically, we are proposing to revert to and codify prior

policy finalized in the 2016 Payment Notice<sup>9</sup> such that QHP issuers offering coverage of abortion services for which federal funds are prohibited again have flexibility in selecting a method to comply with the separate payment requirement in section 1303 of the ACA. Under this proposal, individual market QHP issuers covering abortion services for which federal funds are prohibited would still be expected to comply with all statutory requirements in section 1303 of the ACA and all applicable regulatory requirements codified at § 156.280.

This proposed rule also proposes modifications to the section 1332 Waivers for State Innovation (referred to throughout the preamble to this proposed rule as section 1332 waivers) implementing regulations, including changes to many of the policies and interpretations of the guardrails recently codified in regulation. As outlined in this proposed rule, the policies and interpretations proposed in this rule, if finalized, would supersede and rescind those outlined in the October 2018 “State Relief and Empowerment Waivers” guidance<sup>10</sup> (hereinafter referred to as the “2018 Guidance”) and repeal the previous codification of the interpretations of statutory guidelines in part 1 of the 2022 Payment Notice final rule. HHS and the Department of the Treasury (collectively, the Departments) also propose to modify regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for section 1332 waivers under certain emergent situations. The Departments also propose in this rule processes and procedures for amendments and extensions for approved waiver plans.

## II. Background

### A. Legislative and Regulatory Overview

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new title XXVII to the PHS Act to establish various reforms to the group and individual health insurance markets.

These provisions of the PHS Act were later augmented by other laws, including the ACA. Subtitles A and C of title I of the ACA reorganized, amended, and added to the provisions of part A of title XXVII of the PHS Act relating to group health plans<sup>11</sup> and health

insurance issuers in the group and individual markets. The term “group health plan” includes both insured and self-insured group health plans.

Section 2702 of the PHS Act, as added by the ACA, establishes requirements for guaranteed availability of coverage in the group and individual markets.<sup>12</sup>

Section 1301(a)(1)(B) of the ACA directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the ACA, including coverage of the services described in section 1302(b) of the ACA, adherence to the cost-sharing limits described in section 1302(c) of the ACA, and meeting the actuarial value (AV) levels established in section 1302(d) of the ACA. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the requirement to cover the EHB package to non-grandfathered individual and small group health insurance coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost sharing under the plan does not exceed the limitations described in sections 1302(c)(1) of the ACA.

Section 1302 of the ACA provides for the establishment of an EHB package that includes coverage of EHBs (as defined by the Secretary), cost-sharing limits, and AV requirements. Section 1302(b) of the ACA directs that EHBs be equal in scope to the benefits provided under a typical employer plan, and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

Section 1302(d) of the ACA describes the various levels of coverage based on their AV. Consistent with section 1302(d)(2)(A) of the ACA, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the ACA directs the Secretary to develop guidelines that allow for *de minimis* variation in AV calculations.

<sup>12</sup> Before enactment of the ACA, HIPAA amended the PHS Act (formerly section 2711) to generally require guaranteed availability of coverage for employers in the small group market.

<sup>9</sup> 80 FR 10750.

<sup>10</sup> 83 FR 53575.

<sup>11</sup> The term “group health plan” is used in title XXVII of the PHS Act and is distinct from the term “health plan” as used in other provisions of title I of ACA. The term “health plan” does not include self-insured group health plans.

<sup>8</sup> These abortion services refer to abortion coverage that is subject to the Hyde Amendment's funding limitations which prohibit the use of federal funds for such coverage.

Section 1303 of the ACA, as implemented in 45 CFR 156.280, specifies standards for issuers of QHPs through the Exchanges that cover abortion services for which federal funding is prohibited. The statute and regulation establish that, unless otherwise prohibited by state law, a QHP issuer may elect to cover such abortion services. If an issuer elects to cover such services under a QHP sold through an individual market Exchange, the issuer must take certain steps to ensure that no PTC or CSR funds are used to pay for abortion services for which public funding is prohibited.

As specified in section 1303(b)(2) of the ACA, one such step is that individual market Exchange issuers must determine the amount of, and collect, from each enrollee, a separate payment for an amount equal to the actuarial value of the coverage for abortions for which public funding is prohibited, which must be no less than \$1 per enrollee, per month. QHP issuers must also segregate funds for abortion services for which federal funds are prohibited collected through this payment into a separate allocation account used to pay for such abortion services.

Sections 1311(b) and 1321(b) of the ACA provide that each state has the opportunity to establish an individual market Exchange that facilitates the purchase of insurance coverage by qualified individuals through QHPs and meets other standards specified in the ACA. Section 1321(c)(1) of the ACA directs the Secretary to establish and operate such Exchange within states that do not elect to establish an Exchange or, as determined by the Secretary on or before January 1, 2013, will not have an Exchange operable by January 1, 2014.

Section 1311(c)(1) of the ACA provides the Secretary the authority to issue regulations to establish criteria for the certification of QHPs, including network adequacy standards at section 1311(c)(1)(B) of the ACA. Section 1311(d) of the ACA describes the minimum functions of an Exchange. Section 1311(e)(1) of the ACA grants the Exchange the authority to certify a health plan as a QHP if the health plan meets the Secretary's requirements for certification issued under section 1311(c)(1) of the ACA, and the Exchange determines that making the plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state. Section 1311(c)(6) of the ACA establishes authority for the Secretary to require Exchanges to provide enrollment

periods, including the monthly enrollment period for Indians, as defined by section 4 of the Indian Healthcare Improvement Act, per section 1311(c)(6)(D) of the ACA.<sup>13</sup>

Sections 1311(d)(4)(K) and 1311(i) of the ACA require each Exchange to establish a Navigator program under which it awards grants to entities to carry out certain Navigator duties.

Section 1312(c) of the ACA generally requires a health insurance issuer to consider all enrollees in all health plans (except grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual and small group market risk pools under section 1312(c)(3) of the ACA.

Section 1312(e) of the ACA directs the Secretary to establish procedures under which a state may permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange and to assist individuals in applying for financial assistance for QHPs sold through an Exchange.

Sections 1313 and 1321 of the ACA provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321 of the ACA provides for state flexibility in the operation and enforcement of Exchanges and related requirements.

Section 1321(a)(1) of the ACA directs the Secretary to issue regulations that set standards for meeting the requirements of title I of the ACA for, among other things, the establishment and operation of Exchanges. When operating an FFE under section 1321(c)(1) of the ACA, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the ACA to collect and spend user fees. Office of Management and Budget (OMB) Circular A-25 establishes federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public.

Section 1321(d) of the ACA provides that nothing in title I of the ACA must be construed to preempt any state law that does not prevent the application of title I of the ACA. Section 1311(k) of the

ACA specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1332 of the ACA provides the Secretary of HHS and the Secretary of the Treasury (collectively, the Secretaries) with the discretion to approve a state's proposal to waive specific provisions of the ACA, provided the state's section 1332 waiver plan meets certain requirements. Section 1332(a)(4)(B) of the ACA requires the Secretaries to issue regulations regarding procedures for section 1332 waivers.

Section 1402 of the ACA provides for, among other things, reductions in cost sharing for EHB for qualified low- and moderate-income enrollees in silver level QHPs offered through the individual market Exchanges. This section also provides for reductions in cost sharing for American Indians enrolled in QHPs at any metal level.

Section 1411(c) of the ACA requires the Secretary to submit certain information provided by applicants under section 1411(b) of the ACA to other federal officials for verification, including income and family size information to the Secretary of the Treasury.

Section 1411(d) of the ACA provides that the Secretary must verify the accuracy of information provided by applicants under section 1411(b) of the ACA for which section 1411(c) of the ACA does not prescribe a specific verification procedure, in such manner as the Secretary determines appropriate.

Section 1411(f) of the ACA requires the Secretary, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security, to establish procedures for hearing and making decisions governing appeals of Exchange eligibility determinations.

Section 1411(f)(1)(B) of the ACA requires the Secretary to establish procedures to redetermine eligibility on a periodic basis, in appropriate circumstances, including eligibility to purchase a QHP through the Exchange and for APTC and CSRs.

Section 1411(g) of the ACA allows the use or disclosure of applicant information only for the limited purposes of, and to the extent necessary to, ensure the efficient operation of the Exchange, including by verifying eligibility to enroll through the Exchange and for APTC and CSRs.

Section 5000A of the Internal Revenue Code ("the Code"), as added by section 1501(b) of the ACA, requires individuals to have minimum essential coverage (MEC) for each month, qualify

<sup>13</sup> The Indian Healthcare Improvement Act (IHCLIA), the cornerstone legal authority for the provision of health care to American Indians and Alaska Natives, was made permanent when President Obama signed the bill on March 23, 2010, as part of the ACA.

for an exemption, or make an individual shared responsibility payment. Under the Tax Cuts and Jobs Act (Pub. L. 115–97, December 22, 2017) the individual shared responsibility payment has been reduced to \$0, effective for months beginning after December 31, 2018. Notwithstanding that reduction, certain exemptions are still relevant to determine whether individuals age 30 and above qualify to enroll in catastrophic coverage under 45 CFR 155.305(h) or 156.155.

### 1. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37031), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the “first Program Integrity Rule” published in the August 30, 2013 **Federal Register** (78 FR 54069) and the “second Program Integrity Rule” published in the October 30, 2013 **Federal Register** (78 FR 65045). In the December 27, 2019 **Federal Register** (84 FR 71674), we published a final rule that revised standards relating to oversight of Exchanges established by states and periodic data matching frequency. It also added new requirements for certain issuers related to the separate billing and collection of the separate payment for the premium portion attributable to coverage for certain abortion services. In the May 8, 2020 **Federal Register** (85 FR 27550), we published the Medicare and Medicaid Programs, Basic Health Programs and Exchanges interim final rule with public comment (“May 2020 IFC”) and postponed the implementation deadline for those separate billing and collection requirements by 60 days.

### 2. Market Rules

An interim final rule relating to the HIPAA health insurance reforms was published in the April 8, 1997 **Federal Register** (62 FR 16894). A proposed rule relating to ACA health insurance market reforms that became effective in 2014 was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing those provisions was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015

and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule). The 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058) provided additional guidance on guaranteed availability and guaranteed renewability. In the Market Stabilization final rule that was published in the April 18, 2017 **Federal Register** (82 FR 18346), we released further guidance related to guaranteed availability. In the 2019 Payment Notice final rule in the April 17, 2018 **Federal Register** (83 FR 17058), we clarified that certain exceptions to the special enrollment periods only apply with respect to coverage offered outside of the Exchange in the individual market.

In part 2 of the 2022 Payment Notice final rule in the May 5, 2021 **Federal Register** (86 FR 24140), we made additional amendments to the guaranteed availability regulation regarding special enrollment periods and finalized new special enrollment periods related to timely notice of triggering events, cessation of employer contributions or government subsidies to COBRA continuation coverage, and loss of APTC eligibility.

### 3. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to states on Exchanges on November 18, 2010. In the July 15, 2011 **Federal Register** (76 FR 41865), we published a proposed rule with proposals to implement components of the Exchanges, and a rule in the August 17, 2011 **Federal Register** (76 FR 51201) regarding Exchange functions in the individual market and Small Business Health Options Program (SHOP), eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges, including minimum network adequacy requirements, was published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule).

In the 2014 Payment Notice and in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the March 11, 2013 **Federal Register** (78 FR 15541), we set forth standards related to Exchange user fees. We established an adjustment to the FFE user fee in the Coverage of Certain Preventive Services under the Affordable Care Act final rule, published in the July 2, 2013 **Federal Register** (78 FR 39869) (Preventive Services Rule). In the 2016 Payment

Notice in the February 27, 2015 **Federal Register** (80 FR 10750), we finalized changes related to network adequacy and provider directories.

In the 2017 Payment Notice in the March 8, 2016 **Federal Register** (81 FR 12204), we finalized six standardized plan options to simplify the plan selection process for consumers on the Exchanges. In the 2017 Payment Notice, we also finalized policies relating to network adequacy for QHPs on the FFEs. In the May 11, 2016 **Federal Register** (81 FR 29146), we published an interim final rule with amendments to the parameters of certain special enrollment periods (2016 Interim Final Rule). We finalized these in the 2018 Payment Notice final rule, published in the December 22, 2016 **Federal Register** (81 FR 94058). The 2018 Payment Notice also modified the standardized options finalized in the 2017 Payment Notice and included three new sets of standardized options. In the March 8, 2016 **Federal Register** (81 FR 12203), the final 2017 Payment Notice codified State-based Exchanges on the Federal platform (SBE–FPs) along with relevant requirements.

In the April 18, 2017 Market Stabilization final rule **Federal Register** (82 FR 18346), we amended standards relating to special enrollment periods and QHP certification. In the 2019 Payment Notice final rule, published in the April 17, 2018 **Federal Register** (83 FR 16930), we modified parameters around certain special enrollment periods and discontinued the designation of standardized options. In the April 25, 2019 **Federal Register** (84 FR 17454), the final 2020 Payment Notice established a new special enrollment period. In the May 14, 2020 **Federal Register** (85 FR 29204), the 2021 Payment Notice final rule made certain changes to plan category limitations and special enrollment period coverage effective date rules, allowed individuals provided a non-calendar year qualified small employer health reimbursement arrangement (QSEHRA) to qualify for an existing special enrollment period, and discussed plans for future rulemaking for employer-sponsored coverage verification and non-enforcement discretion for Exchanges that do not conduct random sampling until plan year 2021.

In part 1 of the 2022 Payment Notice final rule, published in the January 19, 2021 **Federal Register** (85 FR 6138), we finalized a new Exchange Direct Enrollment (DE) option. In part 2 of the 2022 Payment Notice final rule in the May 5, 2021 **Federal Register** (86 FR 24140) we finalized new special

enrollment periods related to untimely notice of triggering events, cessation of employer contributions or government subsidies to COBRA continuation coverage, loss of APTC eligibility, and clarified the regulation imposing network adequacy standards with regard to QHPs that do not use provider networks.

#### 4. Essential Health Benefits

On December 16, 2011, HHS released a bulletin<sup>14</sup> that outlined an intended regulatory approach for defining EHB, including a benchmark-based framework. A proposed rule relating to EHBs was published in the November 26, 2012 **Federal Register** (77 FR 70643). We established requirements relating to EHBs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the February 25, 2013 **Federal Register** (78 FR 12833) (EHB Rule). In the 2019 Payment Notice, published in the April 17, 2018 **Federal Register** (83 FR 16930), we added § 156.111 to provide states with additional options from which to select an EHB-benchmark plan for plan years 2020 and beyond.

#### 5. Section 1332 Waivers

In the March 14, 2011 **Federal Register** (76 FR 13553), the Departments published the “Application, Review, and Reporting Process for Waivers for State Innovation” proposed rule<sup>15</sup> to implement section 1332(a)(4)(B) of the ACA. In the February 27, 2012 **Federal Register** (77 FR 11700), the Departments published the “Application, Review, and Reporting Process for Waivers for State Innovation” final rule<sup>16</sup> (hereinafter referred to as the “2012 Final Rule”). In the October 24, 2018 **Federal Register** (83 FR 53575), the Departments issued the 2018 Guidance, which superseded the previous guidance<sup>17</sup> published in the December 16, 2015 **Federal Register** (80 FR 78131) (hereinafter referred to as the “2015 Guidance”), and provided additional information about the requirements that states must meet for waiver proposals, the Secretaries’ application review procedures, pass-through funding determinations, certain analytical requirements, and operational

considerations. In the November 6, 2020 **Federal Register** (85 FR 71142), the Departments issued an interim final rule<sup>18</sup> (hereinafter referred to as the “November 2020 IFC”), which revises regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for waivers under section 1332 during the COVID–19 PHE. In the December 4, 2020 **Federal Register** (85 FR 78572), the Departments published the “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations” proposed rule<sup>19</sup> (hereinafter referred to as the “2022 Payment Notice proposed rule”) to codify certain policies and interpretations of the 2018 Guidance. In the January 19, 2021 **Federal Register** (86 FR 6138), the Departments published the “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations” final rule<sup>20</sup> (hereinafter referred to as the “part 1 of the 2022 Payment Notice final rule”) which codified many of the policies and interpretations outlined in the 2018 Guidance into section 1332 regulations.

#### B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges. We have held a number of listening sessions with consumers, providers, employers, health plans, advocacy groups and the actuarial community to gather public input. We have solicited input from state representatives on numerous topics, particularly the direct enrollment option for FFEs, SBE–FPs and State Exchanges.

We consulted with stakeholders through monthly meetings with the National Association of Insurance Commissioners (NAIC), regular contact with states, and health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all public input we received as we

developed the policies in this proposed rule.

#### C. Structure of Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR parts 147, 155, and 156. In addition, the regulations outlined in this proposed rule governing waivers under section 1332 of the ACA at 45 CFR part 155 subpart N would also be codified in 31 CFR part 33.

The proposed changes to part 147 would specify that issuers are not required to provide a special enrollment period in the individual market with respect to coverage offered outside of an Exchange to consumers who would be eligible for the proposed special enrollment period at § 155.420(d)(16).

The proposed changes to part 155 would repeal the establishment of the Exchange DE option, which permitted State Exchanges, SBE–FPs, and FFEs to use direct enrollment technology and non-Exchange websites developed by approved web brokers, issuers and other direct enrollment partners to enroll qualified individuals in QHPs offered through the Exchange. We propose extending FFE open enrollment to end on January 15 of the applicable year, rather than December 15 of the previous year beginning with the 2022 coverage year and beyond. We also propose to reinstitute previous requirements that Navigators in FFEs be required to provide consumers with information and assistance on certain post-enrollment topics, such as the Exchange eligibility appeals process, the Exchange-related components of the PTC reconciliation process, and the basic concepts and rights of health coverage and how to use it. We further propose to provide a monthly special enrollment period for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for APTC, and whose household income does not exceed 150 percent of the FPL. Finally, we propose to clarify that, for purposes of the special enrollment periods provided at § 155.420(d), a qualified individual or enrollee who qualifies for APTC, or a dependent whose tax filer can qualify for APTC on their behalf, because they meet the criteria at § 155.305(f), but who qualifies for a maximum APTC amount of zero dollars, is not considered APTC eligible for purposes of these special enrollment periods.

The proposed changes to part 156 would update the user fee rates for the 2022 benefit year for all issuers participating on the Exchanges using the Federal platform. We also propose to

<sup>14</sup> “Essential Health Benefits Bulletin,” December 16, 2011. Available at [https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential\\_health\\_benefits\\_bulletin.pdf](https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf).

<sup>15</sup> <https://www.govinfo.gov/content/pkg/FR-2011-03-14/pdf/2011-5583.pdf>.

<sup>16</sup> <https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

<sup>17</sup> <https://www.govinfo.gov/content/pkg/FR-2015-12-16/pdf/2015-31563.pdf>.

<sup>18</sup> <https://www.federalregister.gov/documents/2020/11/06/2020-24332/additional-policy-and-regulatory-revisions-in-response-to-the-covid-19-public-health-emergency>.

<sup>19</sup> <https://www.federalregister.gov/documents/2020/12/04/2020-26534/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022-and>.

<sup>20</sup> <https://www.federalregister.gov/documents/2021/01/19/2021-01175/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022>.

repeal the separate billing requirement, which requires individual market QHP issuers that offer coverage for abortion services for which federal funding is prohibited to separately bill policy holders for the portion of the premium attributable to coverage of such abortion services and instruct the policy holder to pay for this portion of their premium in a separate transaction. Finally, we propose to update a cross reference to mental health parity standards in the provision of EHB regulations.

The proposed changes in 31 CFR part 33 and 45 CFR part 155 related to section 1332 waivers would rescind the previous incorporation of certain policies and interpretations announced in the 2018 Guidance into regulation. The proposals related to section 1332 waivers include proposed processes and procedures for amendments and extensions for approved waiver plans. Additionally, the Departments propose to extend certain flexibilities in the public notice requirements and post award public participation requirements for section 1332 waivers during future emergent situations.

### III. Provisions of the Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule

#### A. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

##### 1. Guaranteed Availability of Coverage (§ 147.104)

###### a. Past-Due Premiums

On January 28, 2021, President Biden issued E.O. 14009, “Strengthening Medicaid and the Affordable Care Act,”<sup>21</sup> directing HHS, and the heads of all other executive departments and agencies with authorities and responsibilities related to the ACA, to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether such agency actions are inconsistent with this Administration’s policy to protect and strengthen the ACA and to make high-quality health care accessible and affordable for every American.

In the preamble to the Market Stabilization final rule,<sup>22</sup> we stated that, to the extent permitted by applicable state law, an issuer will not violate the guaranteed availability requirements in § 147.104 where the issuer attributes a premium payment made for new coverage to any past-due premiums owed for coverage from the same issuer

or another issuer in the same controlled group within the prior 12-month period before effectuating enrollment in the new coverage. This policy addressed concerns regarding the potential for individuals to take unfair advantage of the guaranteed availability rules. For example, an individual could decline to make premium payments at the end of a benefit year, but still receive periods of unpaid coverage during a grace period before coverage is terminated. We were concerned that despite such failures to pay, such individuals would be able to immediately sign up for new coverage for the next benefit year during the individual market open enrollment period, without making restitution for the periods of unpaid coverage.

HHS currently is reviewing this policy to analyze whether it may present unnecessary barriers to accessing health coverage. In compliance with E.O. 14009, we intend to address this interpretation of guaranteed availability in the 2023 Payment Notice rulemaking.

###### b. Special Enrollment Periods (§ 147.104(b)(2))

As further discussed in the preamble section regarding the proposed monthly special enrollment period for APTC-eligible qualified individuals with an expected household income no greater than 150 percent of the FPL (§ 155.420(d)(16)), we propose to add a new paragraph at § 147.104(b)(2)(i)(G) to specify that issuers are not required to provide this special enrollment period in the individual market with respect to coverage offered outside of an Exchange. We propose to add this paragraph because eligibility for the special enrollment period is based on eligibility for APTC, as discussed in the § 155.420(d)(16) preamble section, and APTC cannot be applied to coverage offered outside of an Exchange. We request comment on this proposal.

#### B. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

##### 1. Standardized Options (§ 155.20)

On March 4, 2021, the United States District Court for the District of Maryland decided *City of Columbus v. Cochran*, No. 18–2364, 2021 WL 825973 (D. Md. Mar. 4, 2021). The court reviewed nine separate policies we had promulgated in the 2019 Payment Notice final rule. The court vacated four of these policies. One of the policies the court vacated was the 2019 Payment Notice’s cessation of the practice of

designating some plans in the FFEs as “standardized options.”<sup>23</sup>

We intend to implement the court’s decision as soon as possible, as explained in part 2 of the 2022 Payment Notice final rule.<sup>24</sup> We will not be able to fully implement those aspects of the court’s decision regarding standardized options in time for issuers to design plans and for CMS to be prepared to certify such plans as QHPs for the 2022 plan year. With the rule removing standardized options vacated, we will also need to design and propose new standardized options that otherwise meet current market reform requirements and alter the Federal Exchange eligibility and enrollment platform system build (*HealthCare.gov*) to provide differential display of such plans. Web-brokers that are direct enrollment partners in FFE and SBE–FP states will also need time to adjust their respective systems to provide differential display of such plans on their non-Exchange websites.<sup>25</sup> We will need to design, propose, and finalize such plans in time for issuers to design their own standardized options in accord with HHS’s parameters and to submit those plans for approval by applicable regulatory authorities and for certification as QHPs. This is not feasible for the upcoming QHP certification cycle for the 2022 plan year. The plan certification process for that year has already begun as of April 22, 2021. CMS’ planning for the QHP certification cycle for the 2022 plan year has taken into account the existing policies that the court vacated, and it is too late now to revisit those factors if the process is to go forward in time for plans to be certified by open enrollment later this year.

Specifically, in the last iteration of standardized options we finalized in the 2018 Payment Notice, we created three sets of standardized options based on FFE and SBE–FP enrollment data and state cost-sharing laws. The basis on which we created these three sets of options as well as a number of other factors in the individual market (for example, states with FFEs or SBE–FPs transitioning to SBEs) have changed considerably since the last iteration of standardized options in 2018. Further, we do not have sufficient time to conduct a full analysis of the changes that have occurred in the last several years necessary to timely design and propose adequate standardized options suitable for the current environment. Additionally, in prior years, we

<sup>23</sup> See 83 FR 16974–16975.

<sup>24</sup> See 86 FR 24140, 24264–24265.

<sup>25</sup> See 45 CFR 155.220(c)(3)(i)(H).

<sup>21</sup> 86 FR 7793 (February 2, 2021).

<sup>22</sup> 82 FR 18346, 18349 (April 18, 2017).



proposed and finalized standardized option plan designs prior to the start of the QHP certification cycle for the following plan year such that issuers had sufficient time to assess these standardized options and could thus determine if they wanted to offer them and take the steps necessary to do so. Issuers will not have a sufficient amount of time to meaningfully assess any standardized options we would propose and decide whether or not to offer them if such proposals were made effective before the 2023 plan year.

For these reasons, we intend to resume the designation of standardized options and propose specific plan designs in more complete detail in the 2023 Payment Notice. As such, we seek the views of stakeholders regarding issues related to the proposal of new standardized options, including specifically the views of states with FFEs or SBE-FPs regarding how unique state cost-sharing laws could affect standardized option plan designs to assist in our development of such proposals.

## 2. Navigator Program Standards (§ 155.210)

We propose to amend § 155.210(e)(9) to reinstitute the requirement that Navigators in the FFEs provide information and assistance with regard to certain post-enrollment topics.

Sections 1311(d)(4)(K) and 1311(i) of the ACA require each Exchange to establish a Navigator program under which it awards grants to entities to conduct public education activities to raise awareness of the availability of QHPs; distribute fair and impartial information concerning enrollment in QHPs, and the availability of PTCs and CSRs; facilitate enrollment in QHPs; provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate state agency or agencies for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange. The statute also requires the Secretary, in collaboration with states, to develop standards to ensure that information made available by Navigators is fair, accurate, and impartial. We have implemented the statutorily required Navigator duties through regulations at §§ 155.210 (for all Exchanges) and 155.215 (for Navigators in FFEs).

Further, section 1311(i)(4) of the ACA requires the Secretary to establish standards for Navigators to ensure that Navigators are qualified, and licensed, if appropriate, to engage in the Navigator activities described in the statute and to avoid conflicts of interest. This provision has been implemented at §§ 155.210(b) (generally for all Exchanges) and 155.215(b) (for Navigators in FFEs).

We have also established under § 155.205(d) and (e) that each Exchange must have a consumer assistance function, including the Navigator program, and must conduct outreach and education activities to educate consumers about the Exchange and insurance affordability programs to encourage participation.

We propose to amend § 155.210(e)(9) to reinstitute the requirement that Navigators in the FFEs provide information and assistance with regard to certain post-enrollment topics rather than merely being authorized to do so.

Following a reduction in overall funding available to the FFE Navigator program in 2020, we provided more flexibility to FFE Navigators by making the provision of certain types of assistance, including post-enrollment assistance, permissible, but not required, for FFE Navigators under Navigator grants awarded in 2019 or any later year.<sup>26</sup> On June 4, 2021, CMS issued the 2021 Navigator Notice of Funding Opportunity (NOFO), which will make \$80 million in grant funding available to Navigators in states with an FFE for the 2022 plan year.<sup>27</sup> With funding for the FFE Navigator program increasing substantially for the 2022 plan year, we believe that there will be sufficient Navigator grant funding available to support the post-enrollment duties we propose to once again require of FFE Navigators. We also believe that this proposal aligns with E.O. 14009 on Strengthening Medicaid and the ACA because it will improve consumers'

<sup>26</sup> 84 FR 17511–17514 (April 25, 2019). These post-enrollment topics included: Understanding the process of filing Exchange eligibility appeals; understanding and applying for exemptions from the individual shared responsibility payment that are granted through the Exchange; understanding the availability of exemptions from the requirement to maintain MEC and from the individual shared responsibility payment that are claimed through the tax filing process and how to claim them; the Exchange-related components of the premium tax credit reconciliation process; understanding basic concepts and rights related to health coverage and how to use it; and referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice on certain Exchange-related topics.

<sup>27</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-80-million-funding-opportunity-available-navigators-states-federally-facilitated-0>.

access to health coverage information, not only when selecting a plan, but also throughout the year as they use their coverage.<sup>28</sup> In addition, this proposal is designed to ensure that consumers would have access to skilled assistance beyond applying for and enrolling in health insurance coverage through the Exchange, including, for example, assistance with the process of filing Exchange eligibility appeals, understanding basic information about PTC reconciliation, and understanding basic concepts and rights related to health coverage and how to use it, such as locating providers and accessing care.

Section 1311(i)(3)(D) of the ACA and 45 CFR 155.210(e)(4) already expressly require Navigators to provide post-enrollment assistance by referring consumers with complaints, questions, or grievances about their coverage to appropriate state agencies. This suggests that Congress anticipated that consumers would need assistance beyond the application and enrollment process, and that Navigators would maintain relationships with consumers and be a source of such post-enrollment assistance.

Consistent with the requirements under section 1311(i)(3)(B) and (C) of the ACA that Navigators distribute fair and impartial information concerning enrollment in QHPs and facilitate enrollment in QHPs, and pursuant to the Secretary's authority under section 1321(a)(1)(A) of the ACA, we propose to reinstitute as a requirement at § 155.210(e)(9)(i) that Navigators in the FFEs must help consumers with understanding the process of filing appeals of Exchange eligibility determinations. We are once again not proposing to establish a duty for Navigators to represent a consumer in an appeal, sign an appeal request, or file an appeal on the consumer's behalf. We believe that helping consumers understand Exchange appeal rights when they have received an adverse eligibility determination when applying for health insurance coverage, and assisting them with the process of completing and submitting appeal forms, would help to facilitate enrollment through the FFEs and would help consumers obtain fair and impartial information about enrollment through the FFEs. We would interpret this proposal to include helping consumers file appeals of eligibility determinations made by an Exchange related to enrollment in a QHP, special enrollment periods, and any insurance affordability program, including eligibility determinations for Exchange

<sup>28</sup> 86 FR 7793 (Feb. 2, 2021).

financial assistance, Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program.

Currently, pursuant to § 155.210(e)(9)(ii), Navigators in the FFEs are permitted to provide information and assistance to consumers with regard to understanding and applying for exemptions from the individual shared responsibility payment that are granted through the Exchange, understanding the availability of exemptions from the requirement to maintain minimum essential coverage and from the individual shared responsibility payment that are claimed through the tax filing process and how to claim them, and understanding the availability of the Internal Revenue Service (IRS) resources on this topic. We propose to amend § 155.210(e)(9)(ii) slightly to reinstitute as a requirement that Navigators in the FFEs must help consumers understand and apply for exemptions from the requirement to maintain minimum essential coverage granted by the Exchange. Although consumers who do not maintain minimum essential coverage no longer need to receive an exemption from the individual shared responsibility payment to avoid having to make such a payment, Navigators can still assist consumers age 30 or above with filing an exemption to qualify to enroll in catastrophic coverage under § 155.305(h). We believe that this proposal is consistent with Navigators' duty under section 1311(i)(3)(B) and (C) of the ACA to distribute fair and impartial information concerning enrollment in QHPs, since impartial information concerning the availability of exemptions for consumers age 30 or above to enroll in catastrophic coverage would help consumers make informed decisions about whether or not to enroll in such coverage. This assistance with Exchange-granted exemptions from the requirement to maintain minimum essential coverage would include informing consumers about the availability of the exemption; helping consumers fill out and submit Exchange-granted exemption applications and obtain any necessary forms prior to or after applying for the exemption; explaining what the exemption certificate number is and how to use it; and helping consumers understand and use the Exchange tool to find catastrophic plans in their area.

In addition, we propose to reinstitute as a requirement at § 155.210(e)(9)(iii) that Navigators must help consumers with the Exchange-related components of the PTC reconciliation process and with understanding the availability of

IRS resources on this process. This would include ensuring consumers have access to their Forms 1095-A and receive general, high-level information about the purpose of this form that is consistent with published IRS guidance on the topic. This proposal stems from the requirement under section 1311(i)(3)(B) of the ACA that Navigators distribute fair and impartial information concerning the availability of the PTC under section 36B of the Code.

Consumers who receive premium assistance through APTC may need help with a variety of issues related to the requirement to reconcile the APTC with the PTC allowed for the year of coverage. FFE Navigators would be required to help consumers obtain IRS Forms 1095-A and 8962, and the instructions for both, and to provide general information, consistent with applicable IRS guidance, about the significance of the forms. Navigators would also be required to help consumers understand (1) how to report errors on the Form 1095-A; (2) how to find silver plan premiums using the Exchange tool; and (3) the difference between APTC and PTC and the potential implications for enrollment and reenrollment of not filing a tax return and reconciling the APTC paid on consumers' behalf with their PTC for the year.

Navigators would still not be permitted to provide tax assistance or advice, or interpret tax rules and forms within their capacity as FFE Navigators. However, their expertise related to the consumer-facing aspects of the Exchange, including eligibility and enrollment rules and procedures, would uniquely qualify them to help consumers understand and obtain information from the Exchange that is necessary to understand the PTC reconciliation process. Because this proposal includes a proposed requirement that Navigators provide consumers with information and assistance understanding the availability of IRS resources, Navigators would be expected to familiarize themselves with the availability of materials on *irs.gov*, including the Form 8962 instructions, IRS Publication 974 Premium Tax Credit, and relevant FAQs, and to refer consumers with questions about tax law to those resources or to other resources, such as free tax return preparation assistance from the Volunteer Income Tax Assistance or Tax Counseling for the Elderly programs.

To help ensure consumers have seamless access to Exchange-related tax information beyond the basic information that Navigators can provide,

we propose to reinstitute as a requirement at § 155.210(e)(9)(v) that FFE Navigators must refer consumers to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about the Exchange application and enrollment process, and PTC reconciliations.<sup>29</sup>

We interpret the Navigator duties to facilitate enrollment in QHPs in section 1311(i)(3)(C) of the ACA, to distribute fair and impartial information concerning enrollment in QHPs under section 1311(i)(3)(B) of the ACA, and to conduct public education activities to raise awareness about the availability of QHPs in section 1311(i)(3)(A) of the ACA to include helping consumers understand the kinds of decisions they will need to make in selecting coverage, and how to use their coverage after they are enrolled. We have previously stated that one of the overall purposes of consumer assistance programs is to help consumers become fully informed and health literate.<sup>30</sup>

To improve consumers' health literacy related to coverage generally, and to ensure that individual consumers are able to use their coverage meaningfully, we propose to reinstitute at § 155.210(e)(9)(iv) the requirement that Navigators in the FFEs must help consumers understand basic concepts and rights related to health coverage and how to use it. We also propose to expand our interpretation of this requirement and the activities that fall within its scope. These activities could be supported through the use of existing resources such as the CMS "From Coverage to Care" initiative, which we encourage Navigators to review, and which are now available in multiple languages at <https://marketplace.cms.gov/c2c>. This proposal would improve consumers' access to health coverage information, not just when selecting a plan, but also when using their coverage.

We believe expanding our interpretation of the requirement that Navigators help consumers understand basic concepts and rights related to health coverage and how to use it and

<sup>29</sup> We note that we are not proposing to reinstitute at § 155.210(e)(9)(v) the requirement that Navigators must provide referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about exemptions from the requirement to maintain minimum essential coverage and from the individual shared responsibility payment in light of the fact that the individual shared responsibility payment was reduced to zero for months beginning after December 31, 2018 under the Tax Cuts and Jobs Act (Pub. L. 115-97, December 22, 2017).

<sup>30</sup> See 79 FR 30276.

the activities that fall within the scope of this requirement is vital to improving health equity and helping to address social determinants of health, particularly among underserved and vulnerable populations.<sup>31</sup> Navigators are already required under § 155.210(e)(8) to provide targeted assistance to underserved or vulnerable populations. Underserved and vulnerable populations often experience lower levels of health literacy, which can be a barrier to enrolling in and accessing care.<sup>32</sup> Social determinants of health can also create significant disparities in whether and how an individual is able to afford and access health coverage and health care services, including primary and preventive care. As trusted partners and members of local communities, Navigators are uniquely positioned to establish and build trust with individuals and families as they transition from enrolling in health coverage to using and maintaining their coverage throughout the year.

Additionally, Navigators in FFEs are already required under § 155.215(c)(1) to develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's health literacy and other needs, and under § 155.215(c)(2) to collect and maintain updated information to help understand the composition of the communities in the service area. Because the health literacy needs of consumers will vary depending on their circumstances, we are not requiring Navigators to help consumers with specific health literacy topics. Instead, we propose to expand our interpretation of the Navigator duties proposed to be reinstated as requirements at § 155.210(e)(9)(iv) to include, for example, helping consumers understand (1) key terms used in health coverage materials, such as “deductible” and “coinsurance,” and how they relate to the consumer's health plan; (2) the cost and care differences between a visit to the emergency department and a visit to a primary care provider under the coverage options available to the consumer; (3) how to evaluate their health care options and make cost-conscious decisions, including through the use of information required to be disclosed by their health plan as a result of the Transparency in Coverage Final

Rules;<sup>33</sup> (4) how to identify in-network providers to make and prepare for an appointment with a provider—including utilizing tools and resources available through the No Surprises Act<sup>34</sup> to make informed decisions about their care; (5) how the consumer's coverage addresses steps that often are taken after an appointment with a provider, such as making a follow-up appointment and filling a prescription; and (6) the right to coverage of certain preventive health services without cost sharing under QHPs—including information and resources related to accessing viral testing and vaccination options supported by Exchange coverage. If this proposal is finalized, CMS intends to make training materials and other educational resources available to Navigators regarding the proposed expanded interpretation of this requirement.

FFE Navigators will continue to be permitted to perform the Navigator duties specified in § 155.210(e)(9) until this proposal, if finalized, becomes effective. If this proposal is finalized, FFE Navigators would be required to perform the Navigator duties specified in § 155.210(e)(9) beginning with Navigator grants awarded after the effective date of this rule, including non-competing continuation awards. For example, if this proposal is finalized prior to Navigator grant funding being awarded in fiscal year (FY) 2022, FY 2021 Navigator grantees will be required to perform these duties beginning with the Navigator grant funding awarded in FY 2022 for the second 12-month budget period of the 36-month period of performance. To the extent FFE Navigators awarded grant funding in FY 2021 are not already performing these duties under their year one project plans when this proposal, if finalized, becomes effective, they can revise their project plans to incorporate performance of the duties specified in § 155.210(e)(9) as part of their non-competing continuation application for their FY 2022 funding. If this proposal is finalized as proposed, we would codify in § 155.210(e)(9) the applicability date to make clear when the Navigator duties specified in § 155.210(e)(9) would once again be required.

We interpret the requirement to facilitate enrollment in a QHP under section 1311(i)(3)(C) of the ACA, and the requirement at § 155.210(e)(2) to provide information that assists

consumers with submitting the eligibility application, to include assistance with updating an application for coverage through an Exchange, including reporting changes in circumstances and assisting with submitting information for eligibility redeterminations. Additionally, Navigators are already permitted, but not required, to help with a variety of other post-enrollment issues. For example, we interpret the requirements in § 155.210(e)(1) and (2) that Navigators conduct public education activities to raise awareness about the Exchange and provide fair and impartial information about the application and plan selection process to mean that Navigators may educate consumers about their rights with respect to coverage available through an Exchange, such as nondiscrimination protections, prohibitions on preexisting condition exclusions, and preventive services available without cost-sharing. We also interpret these requirements, together with the requirement in section 1311(i)(3)(B) of the ACA that Navigators distribute fair and impartial information concerning enrollment in QHPs, and the availability of Exchange financial assistance, to mean that Navigators may assist consumers with questions about paying premiums for coverage or insurance affordability programs enrolled in through an Exchange. Finally, we interpret the requirement in section 1311(i)(3)(D) of the ACA and § 155.210(e)(4) to provide referrals for certain post-enrollment issues to mean that Navigators may help consumers obtain assistance with coverage claims denials.

Certified application counselors (CACs) do not receive grants from the FFEs, and thus may have more limited resources than Navigators. As a result, while we are not proposing to require CACs to further expand their required duties, we encourage CACs to help with activities consistent with their existing regulatory duties and recognize that many of these CACs may already be participating in these post-enrollment activities.

We seek comment on all aspects of this proposal.

### 3. Exchange Direct Enrollment Option (§ 155.221(j))

In part 1 of the 2022 Payment Notice final rule, we codified § 155.221(j), which established a process for states to elect a new Exchange Direct Enrollment option (Exchange DE option). Under the Exchange DE option, State Exchanges, SBE-FPs, and FFE states may work directly with private sector entities (including QHP issuers, web-brokers,

<sup>31</sup> 86 FR 7009 (Jan. 25, 2021).

<sup>32</sup> Access to Health Services: Healthy People 2020. Office of Disease Prevention and Health Promotion, Department of Health & Human Services. <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-health>.

<sup>33</sup> 85 FR 72158.

<sup>34</sup> Title I of Division BB of the Consolidated Appropriations Act, 2021, Public Law 116–260 (Dec. 27, 2020).

and agents and brokers) to operate enrollment websites through which consumers can apply for coverage, receive an eligibility determination from the Exchange, and purchase an individual market QHP offered through the Exchange with APTC and CSRs, if otherwise eligible. Subject to meeting HHS approval requirements under § 155.221(j)(1) and (2), the Exchange DE option may be implemented in states with a State Exchange beginning in plan year 2022 and in SBE-FP or FFE states beginning in plan year 2023. We also finalized a 2023 user fee rate of 1.5 percent of the total monthly premiums charged by issuers for each policy in FFE and SBE-FP states that elect the Exchange DE option. Since the publication of part 1 of the 2022 Payment Notice final rule, there have been significant changes to policy and operational priorities resulting from recent shifting policy goals, as well as the enactment of new federal laws. Given these changes, as well as a general lack of interest expressed by states in the option, and potential for the Exchange DE option to be misaligned with administration priorities, we propose to remove § 155.221(j) and repeal the Exchange DE option.

On January 20, 2021, President Biden issued the Executive Order, “On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (E.O. 13985),<sup>35</sup> directing that as a policy matter the federal government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. On January 28, 2021, President Biden issued E.O. 14009.<sup>36</sup> Section 3 of E.O. 14009 directs HHS, and the heads of all other executive departments and agencies with authorities and responsibilities related to Medicaid and the ACA, to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether they are inconsistent with policy priorities described in Section 1 of E.O. 14009, to include protecting and strengthening the ACA by assisting people who are potentially eligible for coverage, and eliminating unnecessary difficulties to obtaining health insurance. Specifically, this agency review must evaluate whether existing policies or regulations, “. . . undermine

the Health Insurance Marketplace®<sup>37</sup> or the individual, small group, or large group markets for health insurance . . .” or “. . . present unnecessary barriers to individuals and families attempting to access Medicaid or ACA coverage . . .”<sup>38</sup>

Section 2 of E.O. 14009 also requires that the Secretary of HHS consider whether to implement an Exchange special enrollment period for exceptional circumstances pursuant to § 155.420(d)(9) and other existing authorities, for uninsured and underinsured individuals to obtain coverage in light of the special circumstances caused by the COVID-19 pandemic. After E.O. 14009 was issued, HHS used its discretion to make such a special enrollment period available to uninsured and underinsured consumers through *HealthCare.gov* from February 15, 2021, through May 15, 2021. To support outreach, education and enrollment efforts for this special enrollment period, HHS has provided \$2.3 million in additional funding to current Navigator grantees in the FFE.<sup>39</sup>

All State Exchanges followed suit and implemented corresponding special enrollment periods on similar timelines. HHS later made a decision to extend the ability of consumers to access the special enrollment period through *HealthCare.gov* through August 15, 2021, and many State Exchanges extended their special enrollment periods, as well. As of May 31, 2021, 1.2 million new consumers had selected plans through *HealthCare.gov*, which represents a substantial increase from previous years when special enrollment periods were available primarily for normal qualifying life events.<sup>40</sup>

In addition, Congress recently passed the ARP,<sup>41</sup> which was signed into law on March 11, 2021. The ARP establishes new ACA programs, including a new grant program for Exchange modernization, which appropriates \$20,000,000 in federal funding, which is available until September 30, 2022, to State Exchanges to implement Exchange system, program, or technology updates to ensure compliance with applicable federal requirements. It also modifies eligibility criteria for existing ACA programs. For example, the provisions

<sup>37</sup> Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services.

<sup>38</sup> 86 FR 7793 (Feb. 2, 2021).

<sup>39</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-additional-navigator-funding-support-marketplace-special-enrollment-period>.

<sup>40</sup> <https://www.cms.gov/newsroom/fact-sheets/2021-marketplace-special-enrollment-period-report-2>.

<sup>41</sup> Public Law 117-2.

in the ARP include a temporary change (for taxable years 2021 and 2022) that allows consumers with household income above 400 percent of the FPL to be applicable taxpayers potentially eligible for PTC, an update to applicable percentage tables to increase the amount of PTC for qualified individuals in all income brackets, and a modification of eligibility for PTC for consumers receiving, or approved to receive, unemployment compensation in 2021. Beginning on April 1, HHS operationalized these new requirements through *HealthCare.gov*, and is providing technical assistance to State Exchanges that are operationalizing these requirements at the state level. Approximately 1.9 million consumers have returned to *HealthCare.gov* to reduce their monthly premiums after APTC by over 40 percent, from \$100 to \$57, on average, while for new consumers selecting plans during the special enrollment period, the average monthly premium after APTC fell by 25 percent.<sup>42</sup>

There are also new obligations established via other health care-related legislation for which HHS is responsible to implement in coordination with states and other federal Departments. This includes the No Surprises Act,<sup>43</sup> which was enacted on December 27, 2020, and establishes an extensive array of federal and state requirements and programs to protect consumers against surprise medical bills.

Given our obligation to review all existing policies and regulations in line with E.O. 14009, E.O. 13985, and recent actions by Congress, including the health care-related provisions of the ARP and other new federal legislation, for which HHS is now responsible or centrally involved in implementing, we have determined that all available resources should be directed to ensuring we are able to efficiently and effectively meet those obligations. Permitting the establishment of the Exchange DE option would detract from those efforts. Furthermore, meeting the new requirements of the health care provisions of the ARP would add complexity to Exchange operations that could reduce the prospects for successful implementation of the Exchange DE option, even if temporarily. For instance, states and DE entities would need to coordinate and implement new procedures to ensure that consumers receive eligibility

<sup>42</sup> <https://www.cms.gov/newsroom/fact-sheets/2021-marketplace-special-enrollment-period-report-1>.

<sup>43</sup> Title I of Division BB of the Consolidated Appropriations Act, 2021, Public Law 116-260 (Dec. 27, 2020).

<sup>35</sup> 86 FR 7009 (Jan. 25, 2021).

<sup>36</sup> 86 FR 7793 (Feb. 2, 2021).

determinations and are enrolled in coverage in line with the modified PTC eligibility criteria under the ARP, and then, that this temporary modification no longer applies after taxable year 2022. As part of this process, HHS would need to ensure the adoption of appropriate procedures, proper approvals, and ongoing oversight. To foreclose the possibility that federal funding and resources will be diverted from efforts to provide direct benefits to consumers made available under recent legislation to optional programs, we are proposing to repeal the Exchange DE option. This will help ensure that available resources are allocated consistent with administration health care priorities and dedicated to implementation of newly-enacted federal laws that provide greater financial assistance and protections to consumers.

Repealing the Exchange DE option should generally have a minimal impact on states and other interested parties. States with State Exchanges already could engage with direct enrollment entities preceding the addition of § 155.221(j). In addition, the FFE has already implemented the direct enrollment program (including classic direct enrollment and enhanced direct enrollment), which provides broad availability of non-Exchange websites to assist consumers applying for, or enrolling in QHPs through an FFE or SBE-FP with APTC and CSRs, when otherwise eligible.<sup>44</sup> Additionally, nothing in the previous regulatory framework prohibited State Exchanges from engaging direct enrollment entities similar to the FFE in order to supplement Exchange operations in their states should they so choose. In fact, although we understand that several State Exchanges have engaged with direct enrollment entities to discuss possibilities for collaboration, State Exchanges and other stakeholders nearly universally cautioned against the Exchange DE option in public comments submitted in response to the proposal. In addition, to date, no state has expressed interest in implementing the Exchange DE option.

Finally, in reviewing § 155.221(j) in line with E.O. 13985 and E.O. 14009, and after further consideration of public comments received when the Exchange DE option was proposed, we have determined that the Exchange DE option is inconsistent with policies described in E.O. 13985 and sections 1 and 3 of E.O. 14009. Consistent with many

public comments received when the Exchange DE option was proposed, we believe that shifting away from *HealthCare.gov* or State Exchange websites as the primary pathway to enroll in and receive information about coverage would harm consumers by unnecessarily fracturing enrollment processes among the Exchange and possibly multiple direct enrollment entities operating in a state. Such a shift would be particularly harmful now when over one million consumers have successfully navigated *HealthCare.gov* during the COVID special enrollment period to enroll in Exchange coverage. We also agree with many commenters who noted that a fractured process could foster consumer confusion about how to get covered and what coverage options are available, since consumers could be directed to direct enrollment entities that only offer assistance with a limited selection of products and some of those products may not provide, for example, MEC for consumers.<sup>45</sup> Many commenters raised concerns that this consumer confusion or limited product selection through direct enrollment entities could also potentially disrupt coordination of coverage with other insurance affordability programs, including Medicaid and CHIP, which is inconsistent with our “no wrong door” policy.<sup>46</sup> In addition, these consequences could act as an unnecessary barrier to consumers seeking Medicaid or ACA coverage rather than facilitating enrollment, and could have additional downstream impacts including an increased uninsured or underinsured population, or more consumers enrolled in less comprehensive coverage options. Commenters noted that these downstream impacts could lead to health inequities by disparately impacting certain vulnerable groups that tend to have a greater need for comprehensive coverage or rely more heavily on Medicaid and CHIP. These concerns and the accompanying risks to the health and well-being of vulnerable groups and consumers in general are

<sup>45</sup> Multiple commenters cited the following report as support for their comments related to DE entities offering limited plan selection and potential disruptions to coordination of coverage with other insurance affordability programs: <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>.

<sup>46</sup> This policy is intended to ensure that consumers can complete a single eligibility application to receive determinations of eligibility across multiple health insurance affordability programs, including for QHPs, APTC, CSRs, as well as Medicaid and CHIP. See, for example, sections 1311(d)(4)(F) and 1413 of the ACA.

heightened as the COVID-19 PHE continues.

By finding the Exchange DE option inconsistent with recent Executive Orders, to ensure that resources are not diverted from fulfilling requirements under the new health care legislation and other initiatives like the COVID special enrollment period, and because no state has yet expressed interest in implementing the Exchange DE option, we propose to remove § 155.221(j) and repeal the Exchange DE option. As explained in the preamble section regarding user fee rates for the 2022 benefit year (§ 156.50), we also propose to repeal the accompanying user fee rate for FFE-DE and SBE-FP-DE states for 2023. We seek comment on this proposal.

#### 4. Open Enrollment Period Extension (§ 155.410(e))

We propose to amend paragraph (e) of § 155.410, which provides the dates for the annual Exchange open enrollment period in which qualified individuals and enrollees may apply for or change coverage in a QHP. The Exchange open enrollment period is extended by cross-reference to non-grandfathered plans in the individual market, both inside and outside of an Exchange, under guaranteed availability regulations at § 147.104(b)(1)(ii). HHS is specifically proposing to alter the open enrollment period for the 2022 coverage year and beyond so that it begins on November 1 and runs through January 15 of the applicable benefit year.

In previous rulemaking, we established that the open enrollment period for benefit years beginning on or after January 1, 2018 would begin on November 1, 2021 and extend through December 15, 2021. In doing so, we indicated a preference for a shorter month-and-a-half open enrollment period, noting our belief that it provides sufficient time for consumers to enroll in or change QHPs and that an end date of December 15th carries the benefit of ensuring consumers receive a full year of coverage and simplifies operational processes for issuers and the Exchanges.<sup>47</sup> Accordingly, the annual open enrollment period dates have been set to November 1st through December 15th for the 2018, 2019, 2020, and 2021 plan years. We have observed several benefits using the present open enrollment period dates. Prior enrollment data suggests that the majority of new consumers to the Exchange select plans prior to December 15th so as to have coverage beginning January 1st. After 4 years, we believe

<sup>44</sup> The FFE direct enrollment pathways are also available in SBE-FP states. See 45 CFR 155.220(l) and 155.221(i).

<sup>47</sup> See 82 FR 18346 at 18381.

consumers have become accustomed to a December 15th end date for the annual open enrollment period. Consistency in open enrollment dates promotes consumer confidence, and a December end date generally aligns with the open enrollment dates for other health insurance programs such as Medicare and employer-based health plans.

We also observed that consumer casework volumes related to coverage start dates and inadvertent dual enrollment decreased in the years after the December 15th end date was adopted, suggesting that the consumer experience was improved by having a singular deadline of December 15th to enroll in coverage for the upcoming plan year. We note that an extension to January 15th may cause some previously observed consumer confusion to resurface surrounding the need to enroll by December 15th for a full year of coverage versus the final deadline of January 15th to enroll for a plan that would begin on February 1st. This confusion could cause some consumers to miss out on coverage for the month of January altogether. A January 15th end date may also require enrollment assisters allocate budget resources over a longer period of time.

However, after observing the effects of a month-and-a-half open enrollment period over these years, we have also observed negative impacts to consumers that may justify an extension of the open enrollment end date to January 15th. In particular, we have observed that consumers who receive financial assistance, who do not actively update their applications during the open enrollment period, and who are automatically re-enrolled into a plan are subject to unexpected plan cost increases if they live in areas where the second lowest-cost silver plan has dropped in price. These consumers will experience a reduction in their allocation of APTC based on the second lowest-cost silver plan price, but are often unaware of their increased plan liabilities until they receive a bill from the issuer in early January after the open enrollment period has concluded. Extending the open enrollment end date to January 15th would allow these consumers the opportunity to change plans after receiving updated plan cost information from their issuer and to select a new plan that is more affordable to them. We have also observed concerns from Navigators, CACs, and agents and brokers that the current open enrollment period does not leave enough time for them to fully assist all interested Exchange applicants with their plan choices. Extending the open enrollment end date to January 15th

would allow more time for consumers to seek assistance from one of these entities. Together, the impacts of providing consumers with more time to react to updated plan cost information and more time to seek enrollment assistance may improve access to health coverage. The additional time for enrollment assistance provided by this proposal may be particularly beneficial to consumers in underserved communities who may face time or language barriers in accessing health coverage by extending the period in which these consumers can seek in-person assistance to enroll.

We seek comment on whether a January 15th end date would provide a balanced approach to providing consumers with additional time to make informed plan choices and increasing access to health coverage, while mitigating risks of adverse selection, consumer confusion, and issuer and Exchange operational burden. We invite comments from stakeholders that would experience specific benefits or adverse effects from a January 15th end date, and encourage comments on potential impacts to resources, consumer assistance budgets, overall enrollment numbers, premiums, and market stability. We seek comments on whether this extension would incentivize consumers who need coverage to begin on January 1st to still make a choice and enroll by December 15th, while also preserving sufficient time in the remainder of the plan year for issuers and Exchanges to perform other obligations such as QHP certification.

We further invite comments on alternative approaches to extending open enrollment to address coverage gaps or enrollment challenges facing consumers and stakeholders. We also invite comments to address whether HHS should explore the possibility of a new special enrollment period, such as for current enrollees who are automatically re-enrolled and experienced a significant cost increase, to address concerns for specific consumer challenges as an alternative to extending the annual open enrollment period. We are also considering whether approaches such as enhanced noticing or special, targeted outreach would address the needs of consumers who are automatically re-enrolled in areas where the second lowest-cost silver plan drops in value, thereby reducing APTC amounts. We seek comment on how we may improve communications and consumer engagement around potential cost changes for consumers who do not actively re-enroll in coverage. We are also considering if improved education and outreach during the coverage year

to raise awareness of existing special enrollment period opportunities, such as those for loss of coverage or becoming newly eligible or ineligible for financial assistance, may serve consumers who do not enroll or change plans during open enrollment. We seek comment on whether adoption of these or other outreach approaches would be a viable alternate approach to finalizing our proposal to extend the open enrollment end date to January 15th.

We anticipate that if an open enrollment end date of January 15th were finalized, this change would apply to all Exchanges, including State Exchanges for the 2022 coverage year and beyond. We note that in preceding plan years, a majority of State Exchanges have used special enrollment period authority to offer additional enrollment time beyond the end date of December 15th in the Exchanges on the Federal platform. We invite additional comments on State Exchange flexibility, as well as operational challenges relating to State Exchange implementation of the proposed change for 2022 and beyond.

#### 5. Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals With a Household Income No Greater Than 150 Percent of the Federal Poverty Level (§ 155.420(d)(16))

In order to make affordable coverage available to more consumers, we propose to codify a monthly special enrollment period for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for APTC, and whose household income is expected to be no greater than 150 percent of the FPL.<sup>48</sup> Section 9661 of the ARP amended section 36B(b)(3)(A) of the Code to decrease the applicable

<sup>48</sup> Generally, a qualifying individual is not eligible for a PTC if their income is below 100 percent of the FPL. However, there are a small number of consumers with a household income below 100 percent of the FPL who may qualify for APTC. Specifically, section 1401 of the ACA amended section 36B of the Code to provide that a taxpayer with a household income which is not greater than 100 percent of the FPL, and who is a lawfully present immigrant and ineligible for Medicaid due to their immigration status, may qualify for a PTC. Consumers for whom this is the case would be able to qualify for the proposed special enrollment period, as well. Additionally, we note that because individuals would qualify for this special enrollment period based on their household income level, household members who apply for coverage with financial assistance together generally will all qualify for the special enrollment period. However, it is also possible that one household member could trigger the special enrollment period based on a change in their eligibility for APTC—for example, a household member who loses access to an offer of coverage through an employer that is considered affordable based on 26 CFR 1.36B02(c)(3)(v).

percentages used to calculate the amount of household income a taxpayer is required to contribute to their second lowest cost silver plan for tax years 2021 and 2022.<sup>49</sup> The applicable percentages are used in combination with factors including annual household income and the cost of the benchmark plan to determine the PTC amount for which a taxpayer can qualify to help pay for a QHP on an Exchange for themselves and their dependents.<sup>50</sup> These decreased percentages generally result in increased PTC for PTC-eligible taxpayers. For those with household incomes no greater than 150 percent of the FPL, the new applicable percentage is zero. As a result of these changes, many low-income consumers whose QHP coverage can be fully paid for with APTC have one or more options to enroll in a silver-level plan without needing to pay a premium after the application of APTC. All of these consumers, if eligible to enroll through an Exchange and to receive APTC, will qualify for CSRs to enroll in a silver plan with an AV of 94 percent.<sup>51</sup>

We propose that this special enrollment period be available at the option of the Exchange, in order to allow State Exchanges to decide whether to implement it based on their specific market dynamics, needs, and priorities. Additionally, we propose that Exchanges on the Federal platform will implement this special enrollment period by providing qualified individuals who are eligible with a pathway to access it through the *HealthCare.gov* application. We propose that implementation in Exchanges on the Federal platform be consistent with current special enrollment period policy and operations, in particular such that there is no limitation on how often individuals who are eligible for this special enrollment period can obtain or utilize it.<sup>52</sup> Consistency in this area will mitigate consumer and other stakeholder confusion and simplify Exchange operations. To provide Exchanges with flexibility to prioritize ensuring that qualifying individuals are able to obtain coverage through this special enrollment period quickly

following plan selection, or to implement this special enrollment period in keeping with their current operations, we propose to add a new paragraph at § 155.420(b)(2)(vii) to provide that the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange.

We also propose to add a new paragraph at § 155.420(a)(4)(ii)(D) to provide that an Exchange must permit eligible enrollees and their dependents to change to a silver level plan, and to amend paragraph § 155.420(a)(4)(iii), which provides other plan category limitations for other special enrollment periods, to provide that these other plan category limitations do not apply to enrollees or dependents who qualify for the proposed special enrollment period.<sup>53</sup> While we expect that most consumers who qualify for this special enrollment period will select a silver level plan because based on their household income, they will be eligible to enroll in a silver level plan with an actuarial value of 94 percent, as further discussed below, we believe that ensuring that current Exchange enrollees do so through plan category limitations will help to mitigate adverse selection. Finally, we propose to add a new paragraph at § 147.104(b)(2)(i)(G) to specify that issuers are not required to provide this special enrollment period in the individual market with respect to coverage offered outside of an Exchange, because eligibility for the special enrollment period is based on eligibility for APTC, and APTC cannot be applied to coverage offered outside of an Exchange.

The APTC benefit changes under the ARP make affordable coverage available to more uninsured people. However, if past trends continue, we believe that some consumers who qualify for these benefits under the ARP may continue to forgo enrollment in premium-free coverage due to a lack of awareness of the opportunity to enroll or a misconception about what the coverage would cost. For example, a February 2021 HHS Assistant Secretary for Planning and Evaluation (ASPE) issue brief<sup>54</sup> indicates that, as of 2018, 20

percent of the uninsured had a household income no higher than \$35,000, which, in 2018, was under 150 percent of the FPL for households with four or more members.<sup>55</sup> A recent analysis of American Community Survey (ACS) and U.S. Census data also indicates that families with low incomes are more likely to be uninsured, and that in 2019, more than 70 percent of uninsured adults said that they were uninsured because the cost of coverage was too high. It also noted that in 2019, almost 70 percent of uninsured, non-elderly adults had lacked coverage for more than a year, and that this group may be particularly difficult to reach with outreach and education efforts.<sup>56</sup>

Therefore, while HHS will undertake extensive outreach and engagement efforts to promote enrollment during the open enrollment period for 2022 coverage and to help ensure consumer awareness of existing special enrollment periods for which they may qualify, given the established challenges with promoting awareness of access to coverage among low-income consumers, we believe additional enrollment opportunities for low-income consumers are appropriate and in the best interest of low-income consumers. The proposed monthly special enrollment period policy would align with E.O. 14009, which requires federal agencies to identify and appropriately address policies that create barriers to accessing ACA coverage, including access through mid-year enrollment.

In addition to providing certain low-income individuals with additional opportunities to newly enroll in free or low-cost coverage that is available to them, we believe this special enrollment period may help consumers who lose Medicaid coverage regain health care coverage. These consumers can already qualify for a special enrollment period due to their loss of Medicaid coverage, per § 155.420(d)(1). Additionally, Exchanges could provide consumers who do not learn of their opportunity to enroll in Exchange coverage until after their 60-day special enrollment period

<sup>55</sup> 2017 Federal Poverty Guidelines. ASPE: <https://aspe.hhs.gov/2017-poverty-guidelines>. We refer to 2017 FPL information to determine APTC eligibility for 2018 because, per 26 CFR 1.36B–1(h), the FPL for computing the PTC for a taxable year is the FPL in effect on the first day of the initial or annual open enrollment period preceding that taxable year. For example, ASPE released 2020 FPL information in January 2020, and so 2020 FPL information applies during the 2020 open enrollment period for 2021 coverage.

<sup>56</sup> Key Facts about the Uninsured Population: Kaiser Family Foundation; Nov 06, 2020, <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>. <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

<sup>49</sup> Public Law 117–2.

<sup>50</sup> See 26 CFR 1.36B–3(g) for more information on the applicable percentage and its relationship to the PTC.

<sup>51</sup> See §§ 155.305(g)(2) and 156.420(a).

<sup>52</sup> For example, those who qualify for the special enrollment period per § 155.420(d)(8) for qualifying individuals who gain or maintain status as an Indian, as defined by section 4 of the Indian Health Care Improvement Act, may change their plan selection multiple times each month, noting that only the last plan selection before the applicable cutoff date for coverage each month will take effect for the month in question.

<sup>53</sup> This provision would not prevent enrollees who qualify for the new special enrollment period from changing to a plan of any category through a special enrollment period that provides this flexibility, including the special enrollment periods at § 155.420(d)(4), (8), (9), (10), (12), and (14).

<sup>54</sup> Trends in the U.S. Uninsured Population, 2010–2020. Office of the Assistant Secretary for Planning and Evaluation (ASPE), February 11, 2021: <https://aspe.hhs.gov/system/files/pdf/265041/trends-in-the-us-uninsured.pdf>.



has passed with additional time to enroll in health care coverage based on the regulation at § 155.420(c)(4) recently finalized in part 2 of the 2022 Payment Notice final rule to allow a qualified individual, enrollee, or dependent who did not receive timely notice of a triggering event and was otherwise reasonably unaware that a triggering event occurred to select a new plan within 60 days of the date that he or she knew, or reasonably should have known, of the occurrence of the triggering event.<sup>57</sup> However, whether consumers in these situations are able to benefit from this flexibility may vary, and may require Exchanges to assess eligibility on a case-by-case basis; it may also require consumers who generally have low household income and who therefore may face other barriers to accessing health care coverage, such as low health insurance literacy levels and lack of internet access, to be aware of the potential for an extended enrollment timeframe and to request it from their Exchange. Therefore, while this special enrollment period would not be limited to qualified individuals who have lost Medicaid coverage, we believe that providing access to a monthly enrollment opportunity could help some consumers who lose Medicaid coverage to regain health insurance coverage, especially those who do not initially realize that loss of Medicaid is a special enrollment period triggering event.

Further, after the COVID-19 PHE comes to an end, we expect to see a higher than usual volume of low-income individuals transitioning from Medicaid coverage to the Exchange, for at least several months. This is because states will begin to catch up on a backlog of redeterminations and terminations for Medicaid beneficiaries with increased income following the end of the COVID-19 PHE, after having generally suspended Medicaid disenrollments since March 2020 to comply with the continuous enrollment provisions in section 6008(b)(3) of the Families First Coronavirus Response Act.<sup>58</sup> Individuals with household income below 150 percent of the FPL frequently experience income fluctuations that cause them to transition between Medicaid, CHIP, and Exchange coverage with financial assistance. Further, the consumer eligibility determination notices sent by state Medicaid and CHIP agencies can vary greatly as far as content, including clarity about the

consumer's next steps to apply for other coverage, where and how to apply, and the timeframes for doing so. Consumers who become ineligible for Medicaid are at risk of being uninsured for a period of time and putting off accessing health care, which can lead to poorer health outcomes, if they are not ultimately able to successfully transition between coverage programs.

For these consumers, 60 days may not be enough time to successfully transition to Exchange coverage, leading to long-term lack of coverage. We believe some of these consumers will benefit from additional time to enroll in Exchange coverage. In some cases, the loss of Medicaid or CHIP coverage comes at a time when consumers are least able to track down new health coverage, but are most in need of it. An example of this can be seen with consumers who lose pregnancy-related Medicaid or CHIP coverage after the postpartum period, posing a health coverage hurdle for new mothers at a time when access to health care is paramount, but their ability to find and enroll in new coverage is limited or impeded by their new childcare responsibilities.

Exchanges that elect to provide this proposed special enrollment period would have the option to require consumers to submit documentation to confirm their eligibility in accordance with their pre- or post-enrollment verification programs. CMS will determine eligibility for this special enrollment period in Exchanges on the Federal platform based on consumers' attested household income. Once an Exchange on the Federal platform grants this special enrollment period to a consumer based on their attested household income, the Exchange would then verify applicants' projected annual household income consistent with 45 CFR 155.320(c).<sup>59</sup> Specifically, CMS would continue to require consumers whose projected annual household income cannot be verified using a trusted electronic data source to submit documentation to confirm their annual income (currently approved under OMB control number 0938-1207/Expiration date February 29, 2024). However, we would not require submission of household income documentation prior to enrollment, and would not pend the enrollment as part of a pre-enrollment verification process, because we believe that the post-enrollment income verification process already in place is sufficient to ensure program integrity because consumers who do not verify their attested household income through

the post-enrollment verification process will have their APTC adjusted accordingly.

Further, CMS' experience administering the verification processes for Exchanges on the Federal platform in accordance with § 155.320(c) shows that submitting documentation quickly to verify income can be especially onerous for those at the lowest income levels who may not have ready access to a computer or smartphone, the internet, a copier or scanner, or funds for postage. As noted above, consumers with household incomes less than 150 percent of the FPL are most likely to experience churn between our health care programs and would be disproportionately affected by the delayed access to coverage that will result while they complete the post-enrollment verification process. For this reason, we are of the view that requiring pre-enrollment verification would needlessly delay access to coverage for a significant portion of eligible consumers; and that it is reasonable and appropriate to allow applicants' enrollments to proceed subject to post-enrollment verification of their household income, if additional documentation is necessary due to inability to verify their household income using a trusted electronic data source.

In addition to outreach and education efforts, we believe that applying plan category limitations to this special enrollment period would help to mitigate adverse selection because it would limit the ability of enrollees to change to a higher metal level plan based on a new health care need and then change back to a silver plan once the health issue is resolved. However, enrollees may still choose to enroll in a silver level plan that is more expensive than their zero dollar option, and, with a monthly special enrollment period, could make this change during the plan year based on a difference in provider network or prescription drug formulary. We believe that enrollees who are interested in changing plans during the year will likely be deterred because such a change will generally mean they lose progress they have made toward meeting their deductible and other accumulators. We seek comment on this proposal and on whether, alternatively, plan category limitations should not be applied. For example, we seek comment on whether to instead exempt the proposed special enrollment period at § 155.420(d)(16) from plan category limitations in order to alleviate the implementation burden on Exchanges, or due to a lack of concern that eligible enrollees would use the proposed

<sup>57</sup> 86 FR 24220.

<sup>58</sup> Public Law 116-127. These provisions enabled states to receive the temporary Federal Medical Assistance Percentage increase under that section.

<sup>59</sup> Public Law 111-148.

special enrollment period to change to a plan category other than silver.

Additionally, we believe that that access to premium-free or very low-cost 94 percent AV coverage will help to mitigate risk of adverse selection, because qualifying individuals will not have an incentive to end coverage when health care services are no longer needed. However, we seek comment on the degree to which the risk of adverse selection increases due to the fact that not all qualifying individuals who have a household income no greater than 150 percent of the FPL will have access to a silver plan with a zero-dollar premium and therefore, due to their small premium for a silver plan, might be more inclined to enroll in coverage due to a health care need and end coverage once this need has been met.

We estimate that this adverse selection risk may result in issuers increasing premiums by approximately 0.5 to 2 percent, and a corresponding increase in APTC outlays and decrease in income tax revenues of approximately \$250 million to \$1 billion, when the enhanced APTC provisions of the ARP are in effect. We describe this impact in more detail and seek comment on it in the regulatory impact analysis (RIA) section later in this proposed rule. We also discuss some of the reasons adverse selection cannot be mitigated in the following paragraphs.

The adverse selection risk presented by the proposal stems, in part, from qualifying individuals who live in states where premiums for Exchange coverage cannot be fully paid for with APTC,<sup>60</sup> such that these individuals will not have access to a silver plan with a zero-dollar premium. Such individuals include residents of states that require all QHPs in the state to cover services that do not qualify as EHB, or that require coverage of certain abortion services for which federal funding is prohibited, and we estimate that ten states may fall into these categories. The portion of premium attributable to services ineligible for APTC is generally small, but increases with age and family size. Additionally, in a few locations, QHP issuers' plan designs are such that both the lowest-cost silver plan and the second lowest-cost silver plan<sup>61</sup> cover services that do not qualify as EHBs, which makes it impossible for most individuals, including those whose household income does not exceed 150

percent of the FPL, to access a silver plan with a zero dollar monthly premium.

Other household-level variation in access to a silver plan with a zero-dollar premium includes households where some, but not all, applicants are APTC-eligible (for example, a household with one or more members with an offer of other MEC through a job), and households with applicants living in different locations, because Exchanges must determine APTC based on a benchmark plan specific to each location.<sup>62</sup> In this case, the applicable premium amount will be based on the subscriber's location, and so available APTC may not fully cover a silver plan premium for the policy. Finally, households that include one or more members who attest affirmatively to their smoking status also may not qualify for an APTC amount sufficient to pay the full premium of a silver plan, because consistent with 26 CFR 1.36B-3(e), APTC eligibility is not determined using a benchmark plan that rates for tobacco.<sup>63</sup>

We seek comment from health insurance issuers and other stakeholders on our position that adverse selection related to this special enrollment period will be mitigated by the availability of free or very low-cost coverage with a 94 percent AV and the application of plan category limitations to this new special enrollment period, or whether the adverse selection risk created by this new special enrollment period cannot be sufficiently mitigated such that its creation may result in significant rate increases. We also solicit comment regarding whether health insurance issuers and other stakeholders have concerns that the policy could cause any adverse selection among higher income individuals with variable hours and income. We also seek comment on whether the requirement that Exchanges verify applicants' projected annual household income post-enrollment, consistent with 45 CFR 155.320(c), is sufficient, or if there are other measures we should put in place to further protect program integrity. We also solicit comment on estimated implementation burdens for Exchanges who elect to provide this additional enrollment opportunity, including whether implementation of this special enrollment period will be possible in time for consumers to benefit from it during the 2022 plan year. We request

comment on whether issuers will have sufficient time to adjust rate filings to account for any increased risk and whether state regulators will have sufficient time to review those filings after a final rule is issued.

We further request comment on whether this proposed special enrollment period should be available indefinitely (as proposed), or whether it should be time-limited. For example, we seek comment on whether we should finalize the proposed special enrollment period to be available only for coverage during years when enhanced APTC benefits are also available, as provided by the section 9661 of the ARP or any subsequent statute. Finally, we request comment on strategies for providing outreach and education for consumers who may be eligible for this special enrollment period, in particular to help qualifying individuals understand and take advantage of the free or very low-cost coverage that is available to them. Within this group, we request comments on strategies for educating consumers who qualify to enroll in a 94 percent AV silver plan about the benefits of enrolling in such a plan even if they are required to pay a small premium, as opposed to electing a premium-free bronze plan with a lower AV.

#### 6. Clarification of Special Enrollment Period for Enrollees Who Are Newly Eligible or Newly Ineligible for Advance Payments of the Premium Tax Credit (§ 155.420(f))

We are proposing new language to clarify that, for purposes of the special enrollment period rules at § 155.420(d), references to ineligibility for APTC refer to being ineligible for such payments or being technically eligible for such payments but qualifying for a maximum of zero dollars per month of such payments. That is, a qualified individual, enrollee, or his or her dependent who is technically eligible for APTC because they meet the criteria at § 155.305(f), but who qualifies for a maximum APTC amount of zero dollars, is also considered ineligible for APTC for purposes of these special enrollment periods, even if they experience a change in circumstance from an APTC ineligible status in accordance with § 155.305(f), such as having other MEC. Currently, the special enrollment periods to which this clarification is applicable are the triggering events at § 155.420(d)(6), but we propose that the clarification apply to all of § 155.420 to ensure consistency, for example, between special enrollment period triggering events at § 155.420(d) and related coverage effective date and

<sup>60</sup> See section 1303(b)(2)(A) of the ACA and section 36B(b)(3)(D) of the Code.

<sup>61</sup> The second lowest-cost silver plan is the "benchmark plan" used to determine a household's APTC eligibility. See 26 CFR 1.36B-3(d)(1) and (f).

<sup>62</sup> 26 CFR 1.36B-3(f)(4).

<sup>63</sup> As of May 2021, CMS data indicate that 1-8 percent of current enrollees, depending on the state, in Exchanges on the Federal platform are rated for tobacco use.

enrollment window rules at § 155.420(b) and (c), respectively.

We believe that the current special enrollment period rules that reference APTC eligibility at § 155.420(d)(6) could permit inconsistent interpretations of what it means to be newly eligible or ineligible for APTC. Exchange regulations at § 155.305(f)(1) define tax filers as APTC eligible if their expected household income for the benefit year for which coverage is requested is greater than or equal to 100 percent but not more than 400 percent of the FPL and they, or their expected tax dependents for the year, (1) meet the requirements for eligibility for enrollment in a QHP through the Exchange; and (2) are not eligible for MEC, with the exception of coverage in the individual market.

IRS rules at 26 CFR 1.36B–3 govern the APTC amount an individual may receive once they are found eligible for APTC under § 155.420(d)(6). Pursuant to these IRS rules, an Exchange enrollee's monthly APTC amount is the excess of the adjusted monthly premium for the applicable benchmark plan<sup>64</sup> over 1/12 of the product of the taxpayer's household income and the applicable percentage for the taxable year. Under this formula, if the applicable percentage of 1/12 of a taxpayer's estimated annual household income is higher than the adjusted monthly premium of the relevant benchmark plan, a taxpayer will be eligible generally for APTC under § 155.305(f)(1), but will qualify for a maximum APTC amount of zero dollars under 26 CFR 1.36B–3. Currently, neither § 155.305(f)(1) or 26 CFR 1.36B–3 recognize or explain that an individual generally could be APTC eligible, but not qualify to receive any *amount* in APTC greater than zero. The current text of § 155.420 similarly does not address this issue such that there could exist some ambiguity about what it means to be APTC eligible or ineligible for purposes of the special enrollment periods under § 155.420.

We propose to add text to § 155.420 to clarify that an individual who qualifies for a maximum APTC amount of zero dollars is considered ineligible for APTC for purposes of the § 155.420's special enrollment periods. Specifically, any determination that an individual cannot receive an APTC amount greater than zero dollars is equivalent to being

found APTC ineligible for purposes of special enrollment period eligibility under § 155.420(d). We believe this interpretation comports with the perspective of an applicant for Exchange coverage who will take their available financial assistance amount into account when selecting a QHP for the upcoming coverage year and who may wish to change their QHP partway through a coverage year because of a change in their financial assistance. Because we believe that the current regulation permits this interpretation, but could instead be interpreted to require strict adherence to the listed requirements for APTC eligibility at § 155.305(f) (which does not address situations where a consumer meets these requirements but qualifies for a zero dollar APTC amount), we are proposing regulation text to ensure consistent and correct interpretation of what it means to be determined ineligible for APTC. This reading of APTC ineligibility is also consistent with our discussion of the policy in previous rulemaking. For example, in the 2020 Payment Notice final rule,<sup>65</sup> we added a new paragraph at § 155.420(d)(6)(v) allowing Exchanges to provide a special enrollment period for qualified individuals who experience a decrease in household income and receive a new determination of eligibility for APTC by an Exchange, and who had MEC for one or more days during the 60 days preceding the financial change.

We believe that this clarification should also apply to special enrollment periods provided in § 155.420(d)(6)(iii) through (v), which include special enrollment periods for individuals who become newly eligible for APTC. Section 155.420(d)(6)(iii) provides a special enrollment period for individuals who are enrolled in an employer-sponsored plan, and who are determined newly eligible for APTC, in part, because they are no longer eligible for qualifying coverage in an eligible-employer sponsored plan in accordance with 26 CFR 1.36B–2(c)(3) (for example, because their employer changed the coverage), and who are allowed to terminate their employer-sponsored coverage. We do not expect that this special enrollment period would be helpful to individuals who qualify for a maximum APTC amount of zero dollars because they would not receive assistance to help pay for monthly QHP premiums. Further, it likely would not benefit individuals currently enrolled in employer-sponsored coverage to change to a QHP without the benefit of an

APTC dollar amount greater than zero, in part because changing plans in the middle of the plan year would cause their deductible and other accumulators to be reset. We seek comments on this proposal.

We believe that this clarification will be especially helpful in light of the removal of the upper APTC eligibility limit on household income at 400 percent of the FPL for taxable years 2021 and 2022 under the ARP.<sup>66</sup> This is because, with this change, any applicants with household incomes over 400 percent of the FPL may be eligible for APTC, more consumers likely will qualify for APTC technically, but for an APTC amount of zero dollars. This clarification ensures that special enrollment period regulations clearly reflect that enrollees for whom this is the case may qualify for a special enrollment period based on a decrease in their household income, or any other change that makes them newly eligible for an APTC amount of greater than zero dollars.

Additionally, this clarification is important because it helps ensure transparency in terms of why enrollees in certain situations that appear similar would not both qualify for one of the special enrollment periods at § 155.420(d)(6). For example, the new affordability provisions in the ARP allow for a situation where an enrollee with a household income above 400 percent of the FPL is newly determined to qualify for an APTC amount of zero dollars (as opposed to APTC-ineligible simply by virtue of exceeding the household income limit), while another enrollee with a household income above 400 percent of the FPL who is residing in a different service area is newly determined eligible for an APTC amount of more than zero dollars based on the cost of their benchmark plan.<sup>67</sup> Both enrollees have received new determinations of APTC eligibility based just being enrolled in Exchange coverage and not having another offer of MEC, but only the latter enrollee who is determined eligible for an APTC amount of greater than zero dollars is intended to be eligible for the special enrollment periods at § 155.420(d)(6). We believe the proposed new language provides needed clarity regarding the eligibility parameters of this special enrollment period to enrollees, particularly

<sup>66</sup> Public Law 117–2.

<sup>67</sup> In Exchanges on the Federal platform, where most ARP changes to APTC eligibility were implemented on April 1, 2021, enrollees in this situation could change their QHP coverage through the 2021 special enrollment period; however, this enrollment window was not available through all Exchanges.

<sup>64</sup> Per IRS rules at 26 CFR 1.36B–3(f), the term “benchmark plan” is generally used to refer to the second lowest-cost silver plan, as described in section 1302(d)(1)(B) of the ACA (42 U.S.C. 18022(d)(1)(B)), offered to the taxpayer's coverage family through the Exchange for the rating area where the taxpayer resides.

<sup>65</sup> 84 FR 17526.

enrollees with household incomes above 400 percent of the FPL.

Exchange regulations at § 155.420(d)(6) provide several special enrollment periods for enrollees and dependents based on a determination that they are newly eligible or newly ineligible for APTC. These special enrollment periods vary in terms of the details of their qualifying events, but all of them are dedicated to ensuring that current Exchange enrollees and other qualified individuals who become newly eligible or ineligible for APTC have an opportunity to re-assess previous decisions about their QHP enrollment, or their decision not to enroll in a QHP, based on gaining or losing eligibility for financial assistance available to them to help lower premiums. Ensuring that Exchanges consistently apply eligibility factors for these special enrollment periods is important under a variety of circumstances. For example, regulations at § 155.420(d)(6)(i) and (ii) provide current Exchange enrollees with an opportunity to change to a different QHP if they are determined newly eligible or newly ineligible for APTC for themselves or their dependents (or have a change in eligibility for CSRs), because such a change may impact the coverage they prefer or the type of coverage they can afford.

Section 155.420(d)(6)(iv) allows individuals to enroll in Exchange coverage if they either experience a change in household income or move to a different state, and as a result become newly eligible for APTC, after they were previously ineligible for APTC solely because of a household income below 100 percent of the FPL and, during the same timeframe, were ineligible for Medicaid because they lived in a non-Medicaid expansion state. Like the other qualifying events at § 155.420(d)(6), this special enrollment period benefits individuals because it allows them to take advantage of APTC for which they were previously ineligible, and we do not believe that it would benefit individuals who newly qualify for APTC but who are not entitled to an APTC amount greater than zero dollars. We also believe that, regarding the group of potentially eligible individuals, increases from a household income of less than 100 percent of the FPL to a household income high enough to qualify for an APTC amount of zero dollars are relatively uncommon.

Finally, § 155.420(d)(6)(v) provides a pathway for individuals who had MEC for at least one of the past 60 days to enroll in Exchange coverage if they experience a decrease in household income and the Exchange newly

determines them eligible for APTC. This special enrollment period was established in the 2020 Payment Notice, specifically to permit individuals enrolled in coverage outside of the Exchange to enroll in Exchange coverage based on newly being able to access APTC.<sup>68</sup> Because this special enrollment period benefits qualified individuals by allowing them to obtain coverage that permits them to qualify for APTC, we do not believe that individuals who newly qualify for an APTC amount of zero dollars generally benefit from this special enrollment period, and they may even be harmed by changing plans mid-year because this would generally cause their deductible and other accumulators to be re-set.

We seek comment on this proposal, including from State Exchanges, regarding whether this definition of APTC eligibility reflects their current implementation of the special enrollment period qualifying events per § 155.420(d)(6), and if not, whether there are policy concerns about this clarification, or the burden of making related changes to Exchange operations. We also seek comment on whether we should provide Exchanges with flexibility in terms of when they are required to ensure that their operations reflect this definition, and whether Exchanges should be permitted to adopt a more inclusive definition, for example, to consider an individual to be newly eligible or ineligible for APTC for purposes of the special enrollment periods at § 155.420(d)(6) based on a change from a zero-dollar maximum APTC amount to APTC ineligibility for another reason per regulations at § 155.305(f).

Additionally, we seek comment on whether the clarification that a qualified individual, enrollee, or his or her dependent is considered APTC ineligible if they meet the requirements at § 155.305(f), but qualify for a maximum APTC amount of zero dollars, should be applied as proposed to all of the special enrollment period qualifying events at § 155.420(d)(6), or whether it should be limited to only apply to some of them. For example, we seek comment on whether we should only apply this clarification to the special enrollment periods at § 155.420(d)(6)(i) and (ii) and (iv) and (v), to permit individuals whose employer-sponsored coverage is no longer considered affordable or no longer meets the minimum value standard to qualify for a special enrollment period to enroll in Exchange coverage through § 155.420(d)(6)(iii) regardless of whether they qualify for an

APTC amount of greater than zero dollars.

*C. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges*

1. User Fee Rates for the 2022 Benefit Year (§ 156.50)

In the December 4, 2020 **Federal Register**, we published the proposed 2022 Payment Notice that proposed to reduce fiscal and regulatory burdens across different program areas and to provide stakeholders with greater flexibility. In the January 19, 2021 **Federal Register** (86 FR 6138), we published part 1 of the 2022 Payment Notice final rule that addressed a subset of the policies proposed in the proposed rule. That final rule, among other things, finalized the user fee rates for issuers offering QHPs through the FFE at 2.25 percent of total monthly premiums, and the user fee rate for issuers offering QHPs through SBE-FPs at 1.75 percent of total monthly premiums.

On January 28, 2021, President Biden issued E.O. 14009, “Strengthening Medicaid and the Affordable Care Act,”<sup>69</sup> directing HHS, and the heads of all other executive departments and agencies with authorities and responsibilities related to the ACA, to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether such agency actions are inconsistent with this Administration’s policy to protect and strengthen the ACA and to make high-quality health care accessible and affordable for every American. As part of this review, HHS examined policies and requirements under the proposed 2022 Payment Notice and part 1 of the 2022 Payment Notice final rule to analyze whether the policies under these rulemakings might undermine the Health Benefits Exchanges or the health insurance markets, and whether they may present unnecessary barriers to individuals and families attempting to access health coverage. HHS also considered whether to suspend, revise, or rescind any such actions through appropriate administrative action.

In compliance with E.O. 14009 and as a result of HHS’s review of the proposed 2022 Payment Notice and part 1 of the 2022 Payment Notice final rule, we have reanalyzed the additional costs of expanded services, such as consumer outreach and education in the FFE and SBE-FPs, and Navigators in the FFE in 2022. As explained in part 2 of the 2022

<sup>68</sup> 84 FR 17526.

<sup>69</sup> 86 FR 7793 (Feb. 2, 2021).

Payment Notice final rule,<sup>70</sup> we indicated the intention to propose to increase the user fee rates for the 2022 benefit year in future rulemaking. Therefore, in this rule, HHS proposes new QHP issuer user fee rates for the 2022 plan year: A new FFE user fee rate of 2.75 percent of total monthly premiums, and a new SBE-FP user fee rate of 2.25 percent of monthly premiums. These proposed rates are based on internal projections of federal costs for providing special benefits to FFE and SBE-FP issuers during the 2022 benefit year, taking into account estimated changes in parameters, specifically the increased funding to the FFE Navigator program and consumer outreach and education. HHS is of the view that pursuit of this proposal is necessary for consistency with E.O. 14009 and this Administration's goal of protecting and strengthening the ACA and making high-quality health care accessible and affordable for every American. We believe that expanded outreach and education will lead to broader risk pools, lower premiums, fewer uninsured consumers, and expanded use of Exchange services.

Section 1311(d)(5)(A) of the ACA permits an Exchange to charge assessments or user fees on participating health insurance issuers as a means of generating funding to support its operations. If a state does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the ACA directs HHS to operate an Exchange within the state. Accordingly, in § 156.50(c), we specify that a participating issuer offering a plan through an FFE or SBE-FP must remit a user fee to HHS each month that is equal to the product of the annual user fee rate specified in the annual HHS notice of benefit and payment parameters for FFEs and SBE-FPs for the applicable benefit year and the monthly premium charged by the issuer for each policy where enrollment is through an FFE or SBE-FP. In addition, OMB Circular No. A-25 establishes federal policy regarding the assessment of user fee charges under other statutes, and applies to the extent permitted by law. Furthermore, OMB Circular No. A-25 specifically provides that a user fee charge will be assessed against each identifiable recipient of special benefits derived from federal activities beyond those received by the general public.

Activities performed by the federal government that do not provide issuers participating in an FFE with a special benefit, or that are performed by the federal government for all QHPs,

including those offered through State Exchanges, are not covered by this user fee. As in benefit years 2014 through 2021, issuers seeking to participate in an FFE in the 2022 benefit year will receive two special benefits not available to the general public: (1) The certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP.

#### a. FFE User Fee Rate

For the 2022 benefit year, issuers participating in an FFE will receive the benefits of the following federal activities:

Under Consumer Information and Outreach:

- Provision of consumer assistance tools;
- Consumer outreach and education; and
- Management of a Navigator program.

Under Health Plan Bid Review, Management, and Oversight:

- Certification processes for QHPs (including ongoing compliance verification, recertification, and decertification); and
- Regulation of agents and brokers.

Under Eligibility and Enrollment:

- Eligibility determinations; and
- Enrollment processes.

Activities through which FFE issuers receive a special benefit also include use of the Health Insurance and Oversight System (HIOS), which is partially funded by FFE and SBE-FP user fees, and the Multidimensional Insurance Data Analytics System (MIDAS) platform, which is fully funded by FFE and SBE-FP user fees. In light of E.O. 14009,<sup>71</sup> published on January 28, 2021, the administration has a priority to increase accessibility and affordability of health care for every American. Consistent with increasing accessibility for every American an expanded budget for consumer support activities and Navigators was developed, and HHS conducted additional analytic review which revealed that the user fee rates established in part 1 of the 2022 Payment Notice final rule<sup>72</sup> need to be increased to sustain essential Exchange-related activities. Based on this new analysis of the increased contract costs and projected premiums and enrollment (including changes in FFE enrollment resulting from anticipated establishment of State Exchanges or SBE-FPs in

certain states in which FFEs currently are operating) for the 2022 plan year, we are proposing to establish the FFE user fee for all participating FFE issuers at 2.75 percent of total monthly premiums.

We seek comment on this proposed FFE user fee rate for 2022.

#### b. SBE-FP User Fee Rate

As previously discussed, OMB Circular No. A-25 establishes federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public.

SBE-FPs enter into a Federal platform agreement with HHS to leverage the systems established for the FFEs to perform certain Exchange functions, and to enhance efficiency and coordination between state and federal programs. Accordingly, in § 156.50(c)(2), we specify that an issuer offering a plan through an SBE-FP must remit a user fee to HHS, in the timeframe and manner established by HHS, equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy where enrollment is through an SBE-FP, unless the SBE-FP and HHS agree on an alternative mechanism to collect the funds from the SBE-FP or state.

The benefits provided to issuers in SBE-FPs by the federal government include use of the federal Exchange information technology and call center infrastructure used in connection with eligibility determinations for enrollment in QHPs and other applicable state health subsidy programs, as defined at section 1413(e) of the ACA, and QHP enrollment functions under § 155.400. The user fee rate for SBE-FPs is calculated based on the proportion of FFE costs that are associated with the FFE information technology infrastructure, the consumer call center infrastructure, and eligibility and enrollment services, and allocating a share of those costs to issuers in the relevant SBE-FPs, as issuers in SBE-FPs receive those special benefits and will be able to access the increased consumer support and education.

Similar to the FFE, activities through which SBE-FP issuers receive a special benefit also include use of HIOS, which is partially funded by FFE and SBE-FP user fees, and the MIDAS platform, which is fully funded by FFE and SBE-FP user fees. In light of E.O. 14009,<sup>73</sup> the

<sup>70</sup> 86 FR 24140, 24288.

<sup>71</sup> 86 FR 7793 (Feb. 2, 2021).

<sup>72</sup> 86 FR 6138 at 6152.

<sup>73</sup> 86 FR 7793 (Feb. 2, 2021).

administration has a priority to increase accessibility and affordability of health care for every American. Consistent with increasing accessibility for every American an expanded budget for consumer support activities and Navigators was developed, and HHS conducted additional analytic review which revealed that the user fee rates established in part 1 of the 2022 Payment Notice final rule<sup>74</sup> need to be increased to sustain essential Exchange-related activities. Based on this new analysis of the increased contract costs and projected premiums and enrollment (including changes in FFE enrollment resulting from anticipated establishment of State Exchanges or SBE-FPs in certain states in which FFEs currently are operating) for the 2022 plan year, we are proposing to establish the SBE-FP user fee for all participating SBE-FP issuers at 2.25 percent of the monthly premium charged by the issuer for each policy under plans offered through an SBE-FP for benefit year 2022. We seek comment on the SBE-FP user fee rate for 2022.

### c. 2023 Exchange DE Option User Fee Rate

In the January 19, 2021 **Federal Register** (86 FR 6138), we published part 1 of the 2022 Payment Notice final rule that codified § 155.221(j), which established a process for states to elect a new Exchange DE option. When finalizing this new Exchange option, we also finalized a 2023 user fee rate of 1.5 percent of the total monthly premiums charged by issuers for each policy in FFE and SBE-FP states that elect the Exchange DE option. As explained above, we propose to repeal the Exchange DE option, accordingly we also propose to repeal the user fee rate associated with § 155.221(j) for the FFE-DE and SBE-FP-DEs for 2023. We seek comment on this proposal.

### 2. Provision of EHB (§ 156.115)

We propose a technical amendment to § 156.115. Section 156.115(a)(3) provides that, to satisfy the requirement to provide EHB, a health plan must provide mental health and substance use disorder services, including behavioral health treatment services required under § 156.110(a)(5), in a manner that complies with the parity standards set forth in § 146.136, implementing the requirements under MHPAEA. Instead of referencing the regulation implementing MHPAEA, we propose to reference section 2726 of the PHS Act and its implementing regulations. We propose this change to

make clear that health plans must comply with all the requirements under MHPAEA, including any amendments to MHPAEA, such as those made by the Consolidated Appropriations Act, 2021,<sup>75</sup> in order to satisfy the EHB requirements.

### 3. Network Adequacy (§ 156.230)

As discussed in more detail in the preamble to § 155.20, on March 4, 2021, the United States District Court for the District of Maryland decided *City of Columbus v. Cochran*, 2021 WL 825973 (D. Md. Mar. 4, 2021). One of the policies the court vacated was the 2019 rule's elimination of the federal government's reviews of the network adequacy of QHPs offered through the FFE in certain circumstances by incorporating the results of the states' reviews.<sup>76</sup>

As we explained in part 2 of the 2022 Payment Notice final rule,<sup>77</sup> we intend to implement the court's decision through rulemaking as soon as possible. However, we also will not be able to fully implement the aspects of the court's decision regarding network adequacy in time for issuers to design plans and for CMS to be prepared to certify such plans as QHPs for the 2022 plan year. We instead intend to address these issues in time for plan design and certification for plan year 2023. Specifically, with the rule vacated, HHS would need to set up a new network adequacy review process, and issuers would need sufficient time before the applicable plan year to assess that their networks meet the new regulatory standard, submit network information, and have the information reviewed by applicable regulatory authorities to have their plans certified as QHPs. Issuers might also have to contract with other providers in order to meet the standard. This is not feasible for the upcoming QHP certification cycle for the 2022 plan year, which began April 22, 2021. We plan to propose specific steps to address federal network adequacy reviews in future rulemaking. We request comments and input regarding how the federal government should approach network adequacy reviews.

<sup>75</sup> See section 203 of Title II of Division BB of the Consolidated Appropriations Act, 2021, Public Law 116-260 (Dec. 27, 2020).

<sup>76</sup> This policy was first announced in the 2018 Letter to Issuers in the Federally-facilitated Marketplaces, December 16, 2016, available at <https://wayback.archive-it.org/2744/20200125161008/> <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces-and-February-17-Addendum.pdf>. See also 83 FR 17024-17026.

<sup>77</sup> 86 FR 24140.

### 4. Segregation of Funds for Abortion Services (§ 156.280)

Section 1303 of the ACA, as implemented in 45 CFR 156.280, specifies standards for issuers of QHPs through the Exchanges that cover abortion services for which federal funding is prohibited. The statute and regulation establish that, unless otherwise prohibited by state law, a QHP issuer may elect to cover such abortion services. If an issuer elects to cover such services under a QHP sold through an individual market Exchange, the issuer must take certain steps to ensure that no PTC or CSR funds are used to pay for abortion services for which public funding is prohibited, as required by statute.

Upon consideration of federal district court decisions invalidating the policy, we are proposing to repeal the separate billing regulation at § 156.280(e)(2)(ii) that requires individual market QHP issuers to send a separate bill for that portion of a policy holder's premium that is attributable to coverage for abortion services for which federal funds are prohibited and to instruct such policy holders to pay for the separate bill in a separate transaction. Specifically, we propose to revert to and codify in amended regulatory text at § 156.280(e)(2)(ii) the prior policy announced in the preamble of the 2016 Payment Notice under which QHP issuers offering coverage of abortion services for which federal funds are prohibited have flexibility in selecting a method to comply with the separate payment requirement in section 1303 of the ACA. Under this proposal, individual market QHP issuers covering such abortion services would still be expected to comply with all statutory requirements in section 1303 of the ACA and all applicable regulatory requirements codified at § 156.280.

Since 1976, Congress has included language, commonly known as the Hyde Amendment, in the Labor, Health and Human Services, Education and Related Agencies appropriations legislation.<sup>78</sup> The Hyde Amendment, as currently in effect, permits federal funds subject to its funding limitations to be used for abortion services only in the limited cases of rape, incest, or if a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in

<sup>78</sup> Accordingly, the Hyde Amendment is not permanent federal law, but applies only to the extent reenacted by Congress from time to time in appropriations legislation.

<sup>74</sup> 86 FR 6138 at 6152.

danger of death unless an abortion is performed. Abortion coverage beyond those limited circumstances is subject to the Hyde Amendment's funding limitations which prohibit the use of federal funds for such coverage.

Section 1303 of the ACA outlines requirements that issuers of individual market QHPs covering abortion services for which federal funds are prohibited must follow to ensure compliance with these funding limitations. Section 1303(b)(2) prohibits QHPs from using any amount attributable to PTC (including APTC) or CSRs (including advance payments of those funds to an issuer, if any) for coverage of abortion services for which federal funds are prohibited. Under sections 1303(b)(2)(B) and (b)(2)(D) of the ACA, as implemented in § 156.280(e)(2)(i) and (e)(4), QHP issuers must collect a separate payment from each enrollee without regard to the enrollee's age, sex, or family status, for an amount equal to the greater of the actuarial value of coverage of abortion services for which public funding is prohibited, or \$1 per enrollee per month. Section 1303(b)(2)(D) of the ACA establishes certain requirements with respect to a QHP issuer's estimation of the actuarial value of abortion services for which federal funds are prohibited including that a QHP issuer may not estimate such cost at less than \$1 per enrollee, per month. Section 1303(b)(2)(C) of the ACA, as implemented at § 156.280(e)(3), requires that QHP issuers segregate funds for coverage of such abortion services collected from enrollees into a separate allocation account used to pay for such abortion services. Thus, if a QHP issuer disburses funds for an abortion for which federal funds are prohibited on behalf of an enrollee, it must draw those funds from the segregated allocation account.

Notably, section 1303 of the ACA does not specify the method a QHP issuer must use to comply with the separate payment requirement under section 1303(b)(2)(B)(i) of the ACA. In the 2016 Payment Notice, we provided guidance with respect to acceptable methods that an issuer of individual market QHPs could use to comply with the separate payment requirement.<sup>79</sup> We stated that QHP issuers could satisfy the separate payment requirement in one of several ways, including by sending the enrollee a single monthly invoice or bill that separately itemized the premium amount for coverage of abortion services for which federal funds are prohibited; sending the enrollee a separate monthly bill for these services; or sending the

enrollee a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge. We also stated that an enrollee could make the payment for coverage of such abortion services and the separate payment for coverage of all other services in a single transaction.<sup>80</sup> On October 6, 2017, we released a bulletin that discussed the statutory requirements for separate payment, as well as this previous guidance on the separate payment requirement.<sup>81</sup>

The 2019 Program Integrity Rule<sup>82</sup> prohibited the compliance options that the 2016 Payment Notice previously provided to QHP issuers with regard to the separate payment requirement. Specifically, the 2019 Program Integrity Rule finalized a policy requiring issuers of individual market QHPs offering coverage of abortion services for which federal funds are prohibited to send an entirely separate monthly bill to policy holders just for the portion of the premium attributable to coverage of such abortion services. QHP issuers were required to either send separate paper bills (which could be sent in the same envelope or mailing), or send separate bills electronically (which were required to be in separate emails or electronic communications). The separate billing regulation also required also required QHP issuers to instruct the policy holder to pay for the portion of their premium attributable to coverage of abortion services for which federal funds are prohibited through a separate transaction from any payment made for the portion of their premium not attributable to this coverage. It also required QHP issuers to make reasonable efforts to collect the payments separately. QHP issuers were to begin complying with these billing requirements on or before the QHP issuer's first billing cycle following June 27, 2020. Although HHS recognized that the previous methods of itemizing or providing advance notice about the amounts noted as permissible in the preamble of the 2016 Payment Notice arguably identifies two 'separate' amounts for two separate purposes, HHS also reasoned that the separate billing policy would better align the regulatory requirements for QHP issuer billing of enrollee premiums with the intent of the separate payment

requirement in section 1303 of the ACA.<sup>83</sup>

HHS announced in the 2019 Program Integrity Rule that it would exercise enforcement discretion to mitigate risk of inadvertent coverage terminations that might result from enrollee confusion in connection with receiving two separate bills for one insurance contract. HHS explained that it would not take enforcement action against a QHP issuer that implemented a policy under which the issuer would not place an enrollee into a grace period and would not terminate QHP coverage based solely on the policy holder's failure to pay the separate bill. The 2019 Program Integrity Rule provided that HHS was adopting this enforcement posture effective June 27, 2020.

In response to the proposal to adopt the separate billing requirement finalized in the 2019 Program Integrity Rule, HHS also received comments expressing concern that lack of transparency into whether QHPs provided coverage of abortion services for which federal funds are prohibited presented the risk that consumers could unknowingly purchase such coverage. To address this risk, HHS announced that as of the effective date of the final rule, February 25, 2020, it would not take enforcement action against QHP issuers that allowed enrollees to opt out of coverage of such abortion services by not paying the separate bill for such services (the opt-out non-enforcement policy). The opt-out non-enforcement policy effectively gave issuers the flexibility to modify the benefits of a plan during a plan year based on an enrollee's desire to opt out of a plan's coverage of such abortion services.

In light of the immediate need for QHP issuers to divert resources to respond to the COVID-19 PHE, HHS published an interim final rule with comment in May 2020 for Medicare and Medicaid Programs, Basic Health Programs and Exchanges (85 FR 27550) ("May 2020 IFC"). The rule delayed by 60 days the date when individual market QHP issuers would be required to begin separately billing policy holders. As finalized at § 156.280(e)(2)(ii), QHP issuers were expected to comply with the separate billing regulation beginning on or before the QHP issuer's first billing cycle following August 26, 2020. The May 2020 IFC noted that a 60-day delay was justified in light of the ongoing litigation in the federal courts of Maryland, Washington, and California challenging the separate billing regulation. The May 2020 IFC also noted that the extended

<sup>80</sup> 80 FR 10750 (February 27, 2015).

<sup>81</sup> CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act (October 6, 2017), available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf>.

<sup>82</sup> 84 FR 71674 (December 27, 2019).

<sup>83</sup> 84 FR 71674, 71693 (December 27, 2019).

<sup>79</sup> 80 FR 10750 (February 27, 2015).



compliance deadline would only apply to the non-enforcement policy under which issuers would have flexibility to refrain from triggering grace periods or coverage terminations where a policy holder failed to pay the separate monthly bill, delaying when this enforcement posture would become available by 60 days (to August 26, 2020).

On April 9, 2020, the United States District Court for the Eastern District of Washington issued an opinion declaring the separate billing regulation invalid in the State of Washington.<sup>84</sup> The district court specifically found that the separate billing regulation was in conflict with Washington's "Single-Invoice Statute,"<sup>85</sup> which requires health insurance issuers in the state to bill enrollees using a single invoice. The district court held that the separate billing regulation did not preempt Washington's Single-Invoice Statute.

On July 10, 2020, the United States District Court for the District of Maryland found the separate billing regulation to be contrary to section 1554 of the ACA and arbitrary and capricious under the Administrative Procedure Act, thus declaring it invalid and unenforceable nationwide.<sup>86</sup> The district court found the separate billing regulation to be in conflict with section 1554 of the ACA, which, among other key provisions, prohibits the Secretary from promulgating regulations that create any unreasonable barriers to obtaining appropriate medical care or impede timely access to health care services. The district court concluded that the policy imposed an unreasonable barrier because it would make it harder for enrollees to pay for insurance because they must keep track of two separate bills, which is likely to cause confusion and might lead to some enrollees losing health insurance. The district court also held the separate billing regulation to be arbitrary and capricious, finding that HHS failed to provide a reasoned explanation for abandoning the policy that existed prior to the adoption of the current separate billing regulation in the 2019 Program Integrity Rule. The district court also held that the implementation deadline was arbitrary and capricious because HHS failed to consider and adequately address specific, contrary evidence from regulated stakeholders that the implementation deadline for compliance with the separate billing

regulation was unreasonable and would not provide QHP issuers with sufficient time to comply.

On July 20, 2020, the United States District Court for the Northern District of California issued an opinion<sup>87</sup> holding that the separate billing regulation was arbitrary and capricious, setting it aside nationwide. The district court held that the required mid-year implementation date for issuers to comply with the separate billing regulation would cause substantial transactional costs to states, issuers, and enrollees without any corresponding benefit. The court further found that the 2019 Program Integrity Rule lacked a reasoned explanation for deviating from the prior acceptable methods available to QHP issuers for compliance with the separate payment requirement and for departing from industry billing practice.

HHS initially appealed all three decisions, but those appeals have been placed on hold following the recent change in administration.

The district courts in Maryland and California vacated the 2019 Program Integrity Rule's separate billing regulation in July 2020, in advance of the postponed compliance deadline of August 26, 2020. As such, the timing of the courts' actions could have dissuaded issuers from assuming further costly administrative and operational burdens that would have been required to build the separate billing policy into their billing and IT systems. Further, as the courts' nationwide invalidation of the policy prevented HHS from requiring initial implementation of the separate billing regulation, the potential consumer confusion over payment obligations, which could have inadvertently led to non-payment of enrollee premium and subsequent termination of consumer coverage, was also avoided. We believe it is prudent to reconsider the separate billing policy and its potential effects on consumer coverage.

In light of these developments, and upon consideration of court decisions invalidating the policy, we have reassessed the value of the separate billing policy and no longer believe it is justified in light of the high burden it would impose on issuers, states, Exchanges, and consumers, as well as the high likelihood of consumer confusion and unintended losses of coverage. Nor do we believe section 1303 of the ACA restricts issuers offering coverage of abortion services for which federal funds are prohibited to

collect the required separate payment through a separate bill and instruct consumers to pay for such bill in a separate transaction. Rather, section 1303 of the ACA outlines requirements that issuers of individual market QHPs covering such abortion services must follow to ensure that no public funding is utilized for coverage of such abortion services, including requiring issuers to collect separate payments for this portion of the premium, to segregate the funds, and deposit such funds into separate allocation accounts. As the 2019 Program Integrity Rule acknowledged, section 1303 of the ACA does not specify the method a QHP issuer must use to comply with the separate payment requirement.<sup>88</sup>

To address these concerns, we are proposing amendments to § 156.280(e)(2)(ii) to revert to and codify the policy previously adopted in the 2016 Payment Notice such that QHP issuers offering coverage of abortion services for which federal funds are prohibited may have flexibility in selecting a reasonable method to comply with the section 1303 separate payment requirement. If finalized, acceptable methods for satisfying the separate payment requirement would be outlined at § 156.280(e)(2)(ii) and would include sending the policy holder a single monthly invoice or bill that separately itemizes the premium amount for coverage of such abortion services; sending the policy holder a separate monthly bill for these services; or sending the policy holder a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge.

We are also proposing a technical change to the section heading of § 156.280 to more accurately reflect its contents if the revisions to rule text under § 156.280 are finalized. We propose that it would instead read, "Segregation of funds for abortion services." We seek comment on these proposals.

Under the proposed amendments to the regulatory text at § 156.280(e)(2)(ii), issuers would no longer be required to send separate paper bills or separate electronic communications. Nor would an issuer electing to send separate bills, or utilizing any of the proposed acceptable methods for collecting the separate payment, be required to instruct consumers to pay for the portion of their premium attributable to coverage of abortion services for which federal funds are prohibited in a

<sup>84</sup> *Washington v. Azar*, 461 F. Supp. 3d 1016 (E.D. Wash. 2020).

<sup>85</sup> Wash. Rev. Code § 48.43.074.

<sup>86</sup> *Planned Parenthood of Maryland, Inc. v. Azar*, No. CV CCB-20-00361 (D. Md. July 10, 2020); 5 U.S.C. 706.

<sup>87</sup> *California v. U.S. Dep't of Health & Hum. Servs.*, 473 F. Supp. 3d 992 (N.D. Cal. July 20, 2020).

<sup>88</sup> 84 FR 71674, 71683.

separate transaction, or to make efforts to collect these payments separately.

If the proposed amendments to § 156.280 are finalized, we anticipate most issuers covering abortion services for which federal funds are prohibited will decline to send two separate monthly bills, and will choose to collect separate payments by one of the other proposed acceptable methods, as those alternatives minimize administrative complexity for issuers, align with industry billing practice, are less costly and administratively burdensome, and promote a more seamless consumer billing and payment experience. We would encourage any issuer electing to send two separate monthly bills to do so in a manner that minimizes consumer confusion and promotes continuity of coverage. For example, if an issuer still chooses to send two separate monthly bills, we encourage issuers to include both bills in the same mailing, explain on both bills that the total premium due is inclusive of the amount attributable to coverage of such abortion services, and explain that the consumer may pay for both bills in a single transaction. We also encourage issuers sending separate bills to explain to the consumer that non-payment of any premium due, including for the portion of premium attributable to such abortion services, would continue to be subject to state and federal rules regarding grace periods to mitigate risk of inadvertent loss of coverage from failure to pay a portion of the premium due.

Reverting to the proposed policy would provide issuers greater billing flexibility and allow issuers to bill using one of the proposed acceptable methods that would eliminate all risk of inadvertent coverage terminations that could result from consumer confusion due to receiving two monthly bills (one for a miniscule amount) in connection with one insurance policy. If the proposed policies in this rule are finalized, we would discontinue the non-enforcement policies we adopted in the 2019 Program Integrity Rule and the May 2020 IFC, described above. These non-enforcement policies, in large part, were intended to mitigate potential coverage losses resulting from enrollee confusion that leads to enrollees' failures to pay the separate, small monthly bill covering abortion services for which federal funds are prohibited.

In announcing these non-enforcement policies, HHS also noted in the 2019 Program Integrity Rule that the opt-out non-enforcement policy was intended to address commenter concerns regarding insufficient transparency into whether QHPs include coverage of abortion services for which federal funds are

prohibited and the risk that consumers could unknowingly purchase QHPs that include such coverage. As part of this discussion, HHS noted the steps already taken to improve transparency regarding QHP offerings by making it easier for consumers to select QHPs that they believe are best suited to their needs and preferences. For instance, HHS noted that such information is available during plan selection to more readily identify QHPs that offer coverage of such abortion services.<sup>89</sup> This information continues to be available on *HealthCare.gov*, providing consumers with the requisite information to make an informed choice about their plan selections regarding coverage of such abortion services. Although we acknowledge that there are some states where there may be no QHP available on the Exchange that omits coverage for such abortion services, such plan availability is subject to state law and issuer choice in plan design as permitted under section 1303 of the ACA.

Section 1303(b)(1)(A)(ii) specifies that an issuer shall determine whether or not the plan provides coverage for abortion services for which federal funds are prohibited for the applicable plan year, expressly providing that issuers are able to determine whether to offer coverage for such abortion services, subject to state law. We are of the view that continuing an opt-out non-enforcement policy would conflict with this flexibility in issuer plan design provided under section 1303. The opt-out non-enforcement policy also conflicts with § 147.106(e)(1), which specifies that only at the time of coverage renewal may issuers modify the health insurance coverage for a product offered to a group health plan or an individual, as applicable. It also specifies that any such modification in the individual market must be consistent with State law and be effective uniformly for all individuals with that product. Further, the United States District Court for the Northern District of California cited the opt-out non-enforcement policy in finding that the 2019 Program Integrity Rule lacked a reasoned explanation for deviating from the prior acceptable methods available to QHP issuers for compliance with the separate payment

requirement.<sup>90</sup> The court explained that inclusion of the opt-out non-enforcement policy, which was not subject to public comment, supported the court's conclusion that HHS changed its prior policy without affording any reasoned explanation for the change. For these reasons, and given that the separate billing requirements finalized in the 2019 Program Integrity Rule have been invalidated, these non-enforcement policies are no longer necessary or feasible long-term, and are therefore discontinued.

We note that individual market QHP issuers covering abortion services for which federal funds are prohibited would still be expected under these proposals to comply with section 1303 of the ACA and all applicable requirements codified at § 156.280. This includes collecting a separate payment from each policy holder per month for an amount equal to the greater of \$1 or the actuarial value of coverage of abortion services for which federal funds are prohibited, continuing to ensure that no federal funding is used to pay for coverage of such abortion services, submitting a segregation plan to the relevant state insurance regulator, and continuing to segregate funds for coverage of such abortion services collected from policy holders into a separate allocation account that is to be used to pay for such abortion services.

We believe the proposed changes to § 156.280(e)(2)(ii) offer issuers options for meaningful compliance with section 1303 and ensure appropriate segregation of funds, without imposing the operational and administrative burdens of the separate billing regulation and without causing additional consumer confusion and unintended losses of coverage. The preamble to the 2019 Program Integrity Rule acknowledged that receipt by a QHP issuer of a single premium payment for the entirety of the policy holder's coverage including abortion services for which federal funds are prohibited did not preclude QHP issuer compliance with the section 1303 separate payment requirement. Although the separate billing regulation required QHP issuers to bill separately and make reasonable efforts to collect the payment separately, it also specified that QHP issuers would not be permitted to refuse a combined payment or terminate the policy on the basis of combined payment. The separate billing policy is ultimately nonessential to QHP issuer compliance with the separate

<sup>89</sup> Frequently Asked Questions for Agents, Brokers, and Assistants Providing Consumers with Details on Plan Coverage of Certain Abortion Services (November 21, 2018), available at <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-Providing-Consumers-with-Details-on-Plan-Coverage-of-Certain-Abortion-Services.pdf>.

<sup>90</sup> *California v. U.S. Dep't of Health & Hum. Servs.*, 473 F. Supp. 3d 992, 1003 (N.D. Cal. July 20, 2020) (citing *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016)).

payment requirement in section 1303 of the ACA. Upon receiving a single premium payment inclusive of the portion of premium attributable to coverage of such services, the QHP issuer may treat that portion as a separate payment and disaggregate the amounts into the separate allocation accounts, consistent with § 156.280(e)(2)(iii). Therefore, we believe requiring QHP issuers to acquire the separate payment through sending separate bills and instructing consumers to pay in separate transactions is more restrictive than necessary, especially in light of the issuer and stakeholder burden and adverse consumer impacts the separate billing regulation could impose.

The 2019 Program Integrity Rule detailed the anticipated financial and operational burdens from the separate billing regulation. Those burdens are discussed in further detail in section V, “Collection of Information Requirements,” and section VII, “Regulatory Impact Analysis,” of that rule. Those burdens included one-time cost estimates for issuers and state Exchanges performing premium billing and payment processing for operational changes such as implementation of the technical build to implement the necessary system changes to support separate billing and receipt of separate payments, which would require significant changes to current billing practice and pose increased challenges given the mid-plan year implementation timeline. The anticipated burden also included ongoing annual costs for sending a separate bill to impacted enrollees, associated record keeping, customer service, and compliance, as well as annual materials costs related to printing of and sending the separate bill. We also acknowledged that the separate billing regulation would impose burden on State Exchange operations due to one-time technical changes such as updating online payment portals to accept separate payments and updating enrollment materials, as well as ongoing annual costs associated with increased customer service, outreach, and compliance.

The Program Integrity Rule also projected that FFEs would incur additional costs due to one-time technical changes and increased call volumes and additional customer services efforts. We also stated that QHP issuers were likely to consider these new costs when setting actuarially sound rates and that this would likely lead to higher premiums for enrollees. We also anticipated increased costs to consumers for the time required to read and understand the separate bills and to

seek help from customer service if necessary, and additional time to read and send separate payments in subsequent months. In total, the projected burden to all issuers, states, State Exchanges performing premium billing and payment processing, the FFEs, and consumers totaled \$546.1 million in 2020, \$232.1 million in 2021, \$230.7 million in 2022, and \$229.3 million annually in 2023 and onwards. It was also anticipated that QHP issuers might consider these new costs when setting actuarially sound rates and that this could lead to higher premiums for enrollees.

Upon reassessing the burden, we also believe the consumer confusion and new logistical obstacles due to the separate billing regulation would disproportionately burden communities who already face barriers to accessing care, such as individuals with limited English proficiency (LEP), individuals with disabilities, rural residents, those with inconsistent or no access to the internet, those with low levels of health care system literacy, and individuals within other marginalized communities. Failure to pay the separate bill entirely due to consumer confusion could also lead to a complete loss of coverage, further exacerbating existing health disparities and jeopardizing health outcomes. The 2019 Program Integrity Rule also acknowledged that the high burden associated with the separate billing regulation might result in issuers withdrawing coverage of abortion services for which federal funds are prohibited altogether to avoid the associated burden, requiring some enrollees to pay for these services out-of-pocket. Based on a 2014 study, the average costs to patients for first-trimester abortion care was \$461, and anywhere from \$860 to \$1,874 for second-trimester abortion care.<sup>91</sup> Transferring these costs to enrollees could disproportionately impact low-income women who may already face barriers to accessing quality health care due to their socioeconomic status, gender, sexual orientation, nationality, or race. We believe proposing repeal of the separate billing regulation would remove these burdensome requirements and obstacles, promoting health equity.

The 2019 Program Integrity Rule reasoned that separate billing was justified to better align with the Congressional intent of section 1303. Although we still believe sending a

separate bill to enrollees for these services is one way in which an issuer may satisfy the separate payment requirement, we no longer believe it is the only method contemplated by the plain reading of section 1303 and believe restricting the acceptable methods for collecting these payments was unnecessary, especially in light of the substantial anticipated burden from the separate billing regulation, the risk of inadvertent coverage terminations that could result from consumer confusion due to receiving two monthly bills, the stakeholder reliance on the prior acceptable methods, and federal district court concerns with barriers to appropriate and timely medical care as well as a lack of corresponding benefits. Consistent with federal district court orders in Maryland and California, we revisited the section 1303 provision in which the separate payment requirement is contained, which is titled “Establishment of allocation accounts,” and is in a larger section titled “Prohibition on the use of Federal funds.”<sup>92</sup> These sections detail issuer requirements for calculating the actuarial value for the portion of the premium attributable to coverage of abortion services for which federal funds are prohibited, requires issuers to collect separate payments for this portion of the premium, to segregate the funds, and deposit such funds into separate allocation accounts. Notably, these sections do not require that issuers must satisfy these requirements by separately billing policy holders or instructing them to pay in separate transactions.

Section 1303 does not specify the method a QHP issuer must use to collect the separate payment.<sup>93</sup> We are therefore proposing a policy that allows issuers to satisfy the separate payment requirement through methods consistent with section 1303 of the ACA, that imposes no more burden on issuers, states, Exchanges, and consumers than is necessary, and that removes unreasonable barriers to obtaining appropriate medical care.

We seek comment on the proposal to repeal the separate billing regulation and amend the regulatory text at § 156.280(e)(2)(ii) to codify the prior policy in the 2016 Payment Notice for satisfying the separate payment requirement in section 1303 of the ACA.

<sup>91</sup> See Roberts, Sarah C.M., Heather Gould, Katrina Kimport, Tracy A. Weitz, and Diana Greene Foster. “Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States.” *Women’s Health Issues*, vol. 24, no. 2 (2014): e211–e218.

<sup>92</sup> Section 1303(b)(2) and (b)(2)(B) of the ACA.

<sup>93</sup> 84 FR 71674, 71683.

#### IV. Provisions of the Proposed Rule for Section 1332 Waivers—Department of Health and Human Services and Department of the Treasury

##### A. 31 CFR Part 33 and 45 CFR Part 155—Section 1332 Waivers

Section 1332 of the ACA permits states to apply for a section 1332 waiver to pursue innovative strategies for providing their residents with access to higher value, more affordable health coverage.

Under section 1332, the Secretary of HHS and the Secretary of the Treasury (collectively, the Secretaries) may exercise their discretion to approve a request for a section 1332 waiver only if the Secretaries determine that the proposal for the section 1332 waiver meets the following four requirements, referred to as the statutory guardrails:

(1) The proposal will provide coverage that is at least as comprehensive as coverage defined in section 1302(b) of the ACA and offered through Exchanges established under title I of the ACA, as certified by the Office of the Actuary of CMS, based on sufficient data from the state and from comparable states about their experience with programs created by the ACA and the provisions of the ACA that would be waived; (2) the proposal will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for the state's residents as would be provided under title I of the ACA; (3) the proposal will provide coverage to at least a comparable number of the state's residents as would be provided under title I of the ACA; and (4) the proposal will not increase the federal deficit. The Secretaries retain their discretionary authority under section 1332 to deny waivers when appropriate given consideration of the application as a whole, even if an application meets the four statutory guardrails.

The Departments are also responsible under section 1332 for monitoring an approved section 1332 waiver's compliance with the statutory guardrails and for conducting evaluations to determine the impact of the section 1332 waiver. Specifically, section 1332 requires that the Secretaries provide for and conduct periodic evaluations of approved section 1332 waivers.<sup>94</sup> The Secretaries must also provide for a process under which states with approved section 1332 waivers must submit periodic reports concerning the implementation of the state's waiver program.<sup>95</sup>

In October 2018, the Departments issued the 2018 Guidance,<sup>96</sup> which provided additional guidance for states that wish to submit section 1332 waiver proposals regarding the Secretaries' application review procedures, pass-through funding determinations, certain analytical requirements, and operational considerations.<sup>97</sup> The 2018 Guidance also included information regarding how the Departments will apply and interpret the section 1332 statutory guardrails when evaluating waiver applications. Furthermore, in part 1 of the 2022 Payment Notice final rule,<sup>98</sup> the Departments finalized the codification of many of the major policies and interpretations outlined in the 2018 Guidance into the text of relevant section 1332 implementing regulations.

On January 28, 2021, President Biden issued E.O. 14009 directing the Secretaries and the heads of all other executive departments and agencies with authorities and responsibilities related to Medicaid and the ACA to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether such agency actions are inconsistent with the policy set forth in section 1 of E.O. 14009.<sup>99</sup> As part of this review, E.O. 14009 directed agencies to look at demonstrations and waivers, as well as demonstration and waiver policies that may reduce coverage under or otherwise undermine Medicaid or the ACA. As such, the Departments have reviewed both the 2018 Guidance and the policies implemented in part 1 of the 2022 Payment Notice final rule on section 1332 waivers to determine whether they are inconsistent with the policy intention of E.O. 14009 to protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American.

In addition, on January 20, 2021, President Biden issued the Executive Order, "On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (E.O. 13985),<sup>100</sup> directing that as a policy matter the federal

government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. As such, the Departments have also reviewed the 2018 Guidance and the policies implemented in part 1 of the 2022 Payment Notice final rule on section 1332 waivers to assess whether, and to what extent, these policies may perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.

Upon review, the Departments have determined that the 2018 Guidance and the policies implemented in part 1 of the 2022 Payment Notice final rule on section 1332 waivers are generally inconsistent with the policy intentions of E.O. 14009 and E.O. 13985. As explained in part 1 of the 2022 Payment Notice final rule and later in this proposed rule, the majority of commenters on both the 2018 Guidance and the 2022 Payment Notice Proposed Rule noted that both the 2018 Guidance and the incorporation of its guardrail interpretations into regulations could result in the Departments approving section 1332 waivers that would result in fewer residents in those states enrolling in comprehensive and affordable coverage, and that those interpretations do not represent the best fulfillment of congressional intent behind the statutory guardrails. After further consideration of these comments as part of the Departments' reviews under E.O. 14009 and E.O. 13985, the Departments propose in this rule to modify 31 CFR 33.108(f)(3)(iv)(A–C) and 45 CFR 155.1308(f)(3)(iv)(A–C) to generally remove the language incorporating the interpretation of the statutory guardrails first set forth in the 2018 Guidance into the text of relevant section 1332 regulations that were finalized in part 1 of the 2022 Payment Notice final rule. In addition, the Departments propose new interpretations and proposed amendments to regulations to provide supplementary information about the requirements that must be met for the approval of a section 1332 waiver, the Secretaries' application review procedures, certain analytical requirements, operational considerations, the calculation of pass-through funding, and amendments and extensions of approved waiver plans. These new proposed policies and interpretations, if finalized, would supersede those outlined in the 2018 Guidance and, where applicable, those

<sup>96</sup> 83 FR 53575 (Oct. 24, 2018).

<sup>97</sup> The 2018 Guidance superseded guidance issued by the Departments in December 2015, which similarly provided information regarding the Secretaries' application review procedures, pass-through funding determinations, certain analytical requirements, operational considerations, and interpretations of the statutory guardrails. See 80 FR 78131, available at <https://www.govinfo.gov/content/pkg/FR-2015-12-16/pdf/2015-31563.pdf>.

<sup>98</sup> See 86 FR 6138.

<sup>99</sup> 86 FR 7793 (Feb. 2, 2021).

<sup>100</sup> 86 FR 7009 (Jan. 25, 2021).

<sup>94</sup> See section 1332(a)(4)(B)(v) of the ACA.

<sup>95</sup> See section 1332(a)(4)(B)(iv) of the ACA.

captured in the current section 1332 implementing regulations as finalized in part 1 of the 2022 Payment Notice final rule.

The Departments are of the view that rescinding the 2018 Guidance, repealing the previous codification of its guardrail interpretations in part 1 of the 2022 Payment Notice final rule, and proposing new policies and interpretations aligns with the Administration's goals to strengthen the ACA and increase enrollment in comprehensive, affordable health coverage among the remaining underinsured and uninsured. These proposals would further advance this Administration's goal to increase access to coverage in that it would empower states to develop innovative health coverage options, through section 1332 waivers, that best fit the states' individual needs and provide coverage to their residents. The proposals are also intended to provide more information and clarity regarding the interpretations, processes and procedures the Departments would apply when reviewing new waiver applications and waiver amendment and extension requests, as well as making pass-through funding determinations for approved waivers. All of these proposals are designed to align with the Administration's commitment to protect and expand Americans' access to high-quality, comprehensive and affordable health care coverage and to ensure that systemic barriers to opportunities and benefits for people of color and other underserved groups are not perpetuated. In addition, these proposals would further support the Administration's efforts to build on the ACA to meet the health care needs created by the COVID-19 PHE, reduce individuals' health care costs, and make our health care system less complex to navigate. Through section 1332 waivers, the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and make high-quality health care accessible for every American.<sup>101</sup> In light of E.O. 13985, the Departments also encourage states to develop waiver proposals that diminish barriers to opportunities and benefits such as health insurance coverage for people of color and other underserved groups. For example, states may include waiver programs that increase plan options for comprehensive coverage, reduce premiums, improve

affordability, as well as address social determinants of health.

As under similar waiver authorities,<sup>102</sup> the Secretaries reserve the right to further evaluate an approved waiver and suspend or terminate an approved waiver, in whole or in part, any time before the date of expiration, if the Secretaries determine that the state materially has failed to comply with the terms and conditions of the waiver or the section 1332 guardrails,<sup>103</sup> laws and regulations, unless specifically waived.<sup>104</sup> And they must come into compliance with any changes in federal law or regulations affecting section 1332 waivers, unless the provision being changed is expressly waived.<sup>105</sup>

#### 1. Coordinated Waiver Process (31 CFR 33.102 and 45 CFR 155.1302)

Regulations at 31 CFR 33.102 and 45 CFR 155.1302 permit, but do not require, states to submit a single application for a section 1332 waiver and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act (the Act), or under any other federal law relating to the provision of health care items or services, provided that the application is consistent with the procedures outlined in the 2012 Final Rule,<sup>106</sup> the procedures for demonstrations under section 1115 of the Act, if applicable, and the procedures under any other applicable federal law or regulations under which the state seeks a waiver.

Similar to the policies outlined in the 2018 Guidance, as well as in guidance previously published in December 2015 (2015 Guidance), the Departments' determination of whether a section 1332 waiver proposal satisfies the statutory guardrails set forth in section 1332 takes into consideration the projected impact of waivers of certain ACA provisions made pursuant to the section 1332 waiver. The Departments also consider related changes to the state's health care system that, under state law, are contingent only on the approval of the section 1332 waiver. For example, the Departments, in making their determination, would take into account the impact of a new, related state-run health benefits program that, under

legislation enacted by the state, would be implemented only if the section 1332 waiver were approved.

The Departments are not proposing any regulatory changes to 31 CFR 33.102 and 45 CFR 155.1302, but are reiterating through this preamble the proposed policy relating to the coordinated waiver process so states understand the process for submission and review of a coordinated waiver. The Departments are of the view that the policies outlined in this proposed rule, which are in line with both the 2018 and 2015 Guidance, further advance E.O. 14009 because these policies aim to protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American by specifying how a state may submit a coordinated waiver. Specifically, under this proposal the Departments would not consider the potential impact of policy changes that are contingent on further state action, such as state legislation that is proposed but not yet enacted that would be in effect during the timeframe for the section 1332 waiver. For example, the Departments would not consider the potential impact of state legislation to expand Medicaid that is not yet enacted. The Departments would also not consider the impact of changes contingent on other federal determinations, including approval of federal waivers (such as waivers under titles XVIII, XIX, or XXI of the Act) pursuant to statutory provisions other than section 1332 of the ACA. Therefore, under this proposal, the Departments would not take into account proposed changes to Medicaid or CHIP state plans that require separate federal approval, such as changes in coverage or federal Medicaid or CHIP spending that would result from a proposed section 1115 demonstration, regardless of whether the section 1115 demonstration proposal is submitted as part of a coordinated waiver application with a section 1332 waiver. Savings accrued under either proposed or current Medicaid or CHIP section 1115 demonstrations would not be factored into the assessment of whether a proposed section 1332 waiver meets the deficit neutrality requirement. The Departments' determination also would not take into account any proposed changes to the Medicaid or CHIP state plan that are subject to federal approval.

Under this proposal, the Departments would, however, take into account changes in Medicaid or CHIP coverage or in federal spending on Medicaid or CHIP that would result directly from the proposed waiver of ACA provisions pursuant to section 1332, holding state

<sup>102</sup> Section 1115 Waiver Demonstrations have similar authority.

<sup>103</sup> See 31 CFR 33.120(d) and 45 CFR 155.1320(d) and STC 16 at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-NH-Approval-STCs.pdf>.

<sup>104</sup> See 31 CFR 33.120(a)(1) and 45 CFR 155.1320(a)(1).

<sup>105</sup> *Ibid.*

<sup>106</sup> See 77 FR 11700, <https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

<sup>101</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/15/statement-by-president-joe-biden-on-the-2021-special-health-insurance-enrollment-period-through-healthcare.gov/>.

Medicaid and CHIP policies constant. For example, if a state section 1332 waiver would result in more or less Medicaid spending, this impact would be considered in the Departments assessment of the section 1332 waiver for the deficit neutrality guardrail.

Nothing in this proposed rule alters a state's authority to make changes to its Medicaid and CHIP policies consistent with applicable law. In addition, this proposed rule does not alter the Secretary of HHS' authority or CMS' policy regarding review and approval of section 1115 demonstrations, and states should continue to work with the Center for Medicaid and CHIP Services (CMCS) on issues relating to section 1115 demonstrations or other Medicaid or CHIP authorities. A state may submit a coordinated waiver application as provided in 31 CFR 33.102 and 45 CFR 155.1302. The waiver applications included in a coordinated waiver application would each be reviewed by the applicable agency component independently according to the federal laws and regulations that apply to each waiver application.

As the Departments receive and review waiver proposals, the Departments will continue to examine the types of changes, contingent on federal approval that will be considered in reviewing section 1332 waiver applications.

## 2. Section 1332 Application Procedures—Application Timing (31 CFR 33.108(b) and 45 CFR 155.1308(b))

Consistent with regulations at 31 CFR 33.108(b) and 45 CFR 155.1308(b), states are required to submit initial section 1332 waiver applications sufficiently in advance of the requested waiver effective date to allow for an appropriate implementation timeline. In this proposed rule, the Departments are not proposing any regulatory changes to 31 CFR 33.108(b) and 45 CFR 155.1308(b), but are proposing through preamble policies related to the timing of initial section 1332 waiver application submissions that are consistent with policies outlined in the 2018 Guidance. These proposed policies are intended to help states understand the requirements for submitting a section 1332 waiver application sufficiently in advance of the requested waiver effective date to allow for enough time for federal review and to maintain smooth operations of the Exchange in the state. In addition, these proposed policies are intended to help states allow for enough time for implementation of their section 1332 waiver plan, and for affected stakeholders, including issuers of health insurance plans that may be affected by

the waiver plan, to take necessary actions based on the approval of the waiver plan, particularly when the waiver impacts premium rates, if approved. As discussed elsewhere in this proposed rule, some section 1332 waiver plans may require operational changes or accommodations to the federal information technology platform or its operations, and these proposed policies would help ensure the state and the Departments are able to sufficiently plan in advance of the effective waiver date. The proposed policies are as follows:

The Departments strongly encourage states interested in applying for section 1332 waivers, including coordinated waivers with section 1115 demonstrations, to engage with the Departments promptly for assistance in formulating an approach to a section 1332 waiver that meets the requirements of section 1332.

In order to help ensure timely decision-making regarding approval, states should plan to submit their initial section 1332 waiver applications with enough time to allow for public comment (as required by 31 CFR 33.112, 31 CFR 33.116(b), 45 CFR 155.1312, and 45 CFR 155.1316(b)), review by the Departments, and implementation of the section 1332 state plan as outlined in the waiver application. For example, for section 1332 waivers that impact the individual market, submission before or during the first quarter of the year prior to the year health plans affected by the section 1332 waiver would take effect would generally permit sufficient time for review and implementation of both the waiver application and affected plans, depending on the complexity of the proposal. It is important to note that the Departments cannot guarantee approval of a section 1332 waiver submission or a state's request for expedited review and will continue to review applications consistent with the timeline requirements outlined in the regulations and statute.<sup>107</sup> The Departments encourage states to work with the Departments on formulating timeframes that take into account the states' legislative sessions and timing of health plan rate filings if the section 1332 waiver is projected to have any impact on premiums. If a state's section 1332 waiver application includes potential operational changes or accommodations to the federal information technology platform or its operations, additional time for review and implementation of the waiver application may be needed. States

should engage with the Departments early in the process to determine whether federal infrastructure can accommodate technical changes that support their requested flexibilities, as discussed elsewhere in this preamble.

The Departments seek comment on these proposals.

## 3. Section 1332 Application Procedures—Statutory Guardrails (31 CFR 33.108(f)(3)(iv) and 45 CFR 155.1308(f)(3)(iv))

The Departments are proposing to modify 31 CFR 33.108(f)(3)(iv)(A–C) and 45 CFR 155.1308(f)(3)(iv)(A–C) to remove the interpretations of the comprehensiveness, affordability, and coverage guardrails that were codified in part 1 of the 2022 Payment Notice final rule. In addition, as detailed later in this section of this preamble, the Departments are proposing to adopt new policies and interpretations with regard to the statutory guardrails that, if finalized, would supersede and rescind those outlined in both the 2018 Guidance and part 1 of the 2022 Payment Notice final rule. These proposed guardrail interpretations are largely in line with those in the 2015 Guidance. The Departments are also proposing to modify 31 CFR 33.108(f)(3)(iv) and 45 CFR 155.1308(f)(3)(iv) to remove the reference, as codified under part 1 of the 2022 Payment Notice final rule, to interpretive guidance published by the Departments.

The 2018 Guidance aimed to allow states to pursue section 1332 waivers with the goals of increasing consumer choice and promoting private market competition. In particular, in the 2018 Guidance, the Secretaries explained that their interpretations of the statutory guardrails were meant to remove restrictions that could limit consumer choice by allowing states to provide access to health insurance coverage at different price points and benefits levels, including less comprehensive plans that states considered to be better suited to consumer needs. Specifically, the 2018 Guidance interpreted the comprehensiveness and affordability guardrails to be satisfied if comprehensive and affordable coverage were *available* to consumers, without regard to who would actually enroll in such coverage. In addition, the 2018 Guidance instructed that these two guardrails must be evaluated in conjunction. The 2018 Guidance explained that it is not enough to make available some coverage that is comprehensive but not affordable, while making available other coverage that is affordable but not comprehensive. Thus,

<sup>107</sup> 31 CFR 33.108 and 45 CFR 155.1308; Section 1332(d)(1) of the ACA.

the Departments stated that a state plan would comply with the comprehensiveness and affordability guardrails, consistent with the statute, if it makes coverage that is both comprehensive and affordable *available* to a comparable number of otherwise qualified residents as would have had such coverage available absent the waiver.

In the 2018 Guidance, the Departments also stated that section 1332(b)(1)(C) of the ACA requires that a state's plan under a section 1332 waiver will provide coverage "to at least a comparable number of its residents" as would occur without the waiver.<sup>108</sup> The 2018 Guidance further noted that the text of the coverage guardrail provision of the statute is silent as to the type of coverage that is required. Accordingly, to enable state flexibility and to promote choice of a wide range of coverage to ensure that consumers can enroll in coverage that is right for them, in the 2018 Guidance, the Departments would consider section 1332 waivers to satisfy the coverage guardrail requirement if at least as many state residents were projected to be enrolled in comprehensive and less comprehensive health plans combined under the waiver as would be enrolled without the waiver. Under that interpretation, the Departments could approve a state's section 1332 waiver designed to promote residents' enrollment in less comprehensive or less affordable coverage. As long as a comparable number of residents were projected to be covered as would have been covered absent the waiver, the coverage guardrail would be met.

The policies and interpretations in the 2018 Guidance were in line with the Administration's priorities at the time. In particular, the 2018 Guidance noted that the Secretaries would consider favorably section 1332 waiver applications that advance specific principles including: Providing increased access to affordable private market coverage, encouraging sustainable spending growth, fostering state innovation, supporting and empowering those in need, and promoting consumer-driven health care. The 2018 Guidance, including the interpretations of the guardrails announced therein, aimed to advance these principles and noted that the Secretaries intended to provide states with maximum flexibility within the law to innovate, empower consumers, and expand higher value and more affordable coverage options.

In part 1 of the 2022 Payment Notice final rule, the Departments finalized the 2018 Guidance interpretation of the guardrails into the text of the section 1332 implementing regulations. Specifically, the Departments finalized regulatory language in 31 CFR 33.108(f)(3)(iv)(A) and 45 CFR 155.1308(f)(3)(iv)(A), explaining that the Departments would consider the comprehensive coverage guardrail to be met by a state section 1332 waiver plan if the plan would provide consumers access to coverage options that are at least as comprehensive as the coverage options provided without the waiver, to at least a comparable number of people as would have had access to such coverage absent the waiver. The final rule also added language to 31 CFR 33.108(f)(3)(iv)(B) and 45 CFR 155.1308(f)(3)(iv)(B) providing that the Departments would consider the affordability requirement to be met by a state section 1332 waiver plan that would provide consumers access to coverage options that are at least as affordable as the coverage options provided without the waiver, to at least a comparable number of people as would have had access to such coverage absent the waiver. These modifications also provided, consistent with the 2018 Guidance and the Administration's priorities at the time, that the Departments would consider the comprehensiveness and affordability guardrails met if a section 1332 waiver plan provides *access* to coverage that is as comprehensive and affordable as coverage forecasted to have been available in the absence of the waiver, and is projected to be available to a comparable number of people under the waiver, as opposed to the actual number of people enrolled in comprehensive and affordable coverage as under the 2015 Guidance. The final rule also added regulatory language to 31 CFR 33.108(f)(3)(iv)(C) and 45 CFR 155.1308(f)(3)(iv)(C) providing that, for purposes of the coverage guardrail, "coverage" refers to minimum essential coverage as defined in 26 U.S.C. 5000A(f) and 26 CFR 1.5000A-2, and health insurance coverage as defined in 45 CFR 144.103.

A majority of commenters on both the 2018 Guidance and the 2022 Payment Notice proposed rule were concerned that the 2018 Guidance and its proposed codification would undermine the congressional intent underlying the section 1332 guardrails and effectively codify policy they believe is based on a misapplication of the statutory guardrails. The commenters were concerned that the focus on the

interpretation of the availability of comprehensive and affordable coverage in the 2018 Guidance would result in fewer residents enrolled in comprehensive and affordable coverage. Other commenters asserted that the interpretation of the availability of comprehensive and affordable coverage for the coverage guardrail allows for a disjointed application of the guardrails whereby a state can meet the coverage guardrail, while its waiver plan reduces the overall comprehensiveness and affordability of coverage in a state. A few commenters recommended rescinding and abandoning the 2018 Guidance completely in favor of returning to the prior interpretation of the guardrails described in the 2015 Guidance. In addition, some commenters also expressed concern that alternative coverage options, which would qualify for the purposes of meeting the coverage guardrail under the 2018 Guidance, are not subject to the same limitations as comprehensive coverage in terms of consumer protections. For instance, alternative plan options generally lack financial limitations like out-of-pocket maximums and annual/lifetime limits, and, if consumers covered by alternative plan options experience unexpected, potentially-catastrophic health events, they are likely to pay substantially more out-of-pocket to cover incurred costs. Further, commenters also raised concerns that alternative plans can terminate or deny coverage based on health status, which would tend to affect high-risk individuals. Coupled with the diminished affordability of comprehensive coverage, this possibility puts high-risk individuals at great risk of going without effective coverage.

In this proposed rule, the Departments are proposing changes to 31 CFR 33.108 and 45 CFR 155.1308 to rescind the interpretations of the statutory guardrails announced in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice final rule. The decision to rescind those interpretations is based on further consideration of commenters' concerns that the proposals outlined in this rule are a better interpretation of section 1332(b)(1)(A)-(C), and the Departments' reviews under E.O. 14009, which was intended to strengthen the ACA and expand high-quality health care and E.O. 13985, which was intended to pursue a comprehensive approach to advancing equity for all. After further consideration, the Departments have concluded that the interpretations of section 1332's comprehensiveness, affordability, and coverage guardrails

<sup>108</sup> 83 FR at 53577.



codified in part 1 of the 2022 Payment Notice final rule could permit section 1332 waivers that do not result in a comparable number of residents overall being enrolled in coverage that is at least as affordable and as comprehensive as they would have enrolled in without the waiver. As discussed in more detail later in this section, the Departments' proposed changes are intended to align with the President's instruction in E.O. 14009 to adopt policies to strengthen the implementation of the ACA and remove any barriers that those policies may create for expanding coverage, lowering costs, and making high-quality health care accessible for every American. Furthermore, in line with E.O. 14009, this Administration is focused on ensuring high-quality health care is accessible and affordable for every American. As such, the Departments are of the view that the comprehensiveness and affordability guardrails should focus on the types of coverage residents actually purchase, rather than the types of coverage residents have *access* to.

Upon further consideration of these issues, the Departments have determined that the guardrail interpretations codified in part 1 of the 2022 Payment Notice final rule are inconsistent with the Departments' goal of ensuring individuals *are enrolled* in affordable, comprehensive coverage and not just that there is generalized *access* to such coverage. The plans that could be offered to individuals under section 1332 waivers applying the interpretations codified in the part 1 of the 2022 Payment Notice final rule could allow state section 1332 waivers that would result in more individuals enrolling in medically underwritten plans<sup>109</sup> that offer only limited benefits,

<sup>109</sup>Health insurance companies medically underwrite policies to try to ascertain prospective enrollees' health statuses when they are applying for health insurance coverage in order to determine whether to offer these individuals coverage, or at what price, and with what exclusions or limits, to offer coverage. (<https://www.healthcare.gov/glossary/medical-underwriting/>) Since 2014, however, medical underwriting is no longer permitted in the individual or small group markets with respect to non-grandfathered health insurance coverage, due to ACA rules. Instead, all such individual and small group plans are guaranteed issue. Guaranteed issue is a requirement that health plans must permit any individual to enroll regardless of health status, age, gender, or other factors that might predict the use of health services. Guaranteed issue does not limit how much individuals can be charged if they enroll in coverage. (<https://www.healthcare.gov/glossary/guaranteed-issue/>). However, the ACA's community rating protections prevent health insurers from varying premiums within a geographic area based on age, gender, health status or other factors with respect to non-grandfathered health insurance coverage. (<https://www.healthcare.gov/glossary/community-rating/>).

charge higher out-of-pocket costs, or both, which is inconsistent with the goal of the E.O. 14009 to reduce barriers for expanding comprehensive affordable coverage. Allowing more individuals to be in medically underwritten plans could also have a disparate impact on vulnerable populations, especially people of color and those who are in poverty, those who are underserved, and those with pre-existing conditions, which is inconsistent with the goal of E.O. 13985.

Additionally, the Departments are of the view that the section 1332 waiver proposals that could be available under the guardrail interpretations in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice final rule may also not be in line with E.O. 14009. For example, the *Section 1332 State Relief and Empowerment Waiver Concepts Discussion Paper* (November 2018 Discussion Paper)<sup>110</sup> included waiver concepts that were intended to foster discussion with states by illustrating how states might take advantage of new flexibilities provided in the 2018 Guidance. The Departments are of the view that some of these waiver concepts which rely upon the 2018 Guidance interpretation of the guardrails, are not in line with E.O. 14009 goals to protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American. For example, the *Adjusted Plan Options* section 1332 waiver concept included in the 2018 Discussion Paper would permit states to have the flexibility to provide state financial assistance for non-QHPs. A section 1332 waiver proposal that includes this concept could potentially increase coverage in non-QHPs and potentially decrease enrollment in comprehensive coverage plans by allowing consumers to use a state subsidy towards catastrophic plans, individual market plans that are not QHPs, or plans that do not fully meet ACA requirements. In reviewing section 1332 waiver policies in light of E.O. 14009, this waiver concept is inconsistent with the goal of E.O. 14009, as it would likely result in consumers enrolling in non-QHPs and plans that do not fully meet ACA requirements, thereby increasing barriers for expanding comprehensive affordable coverage and potentially decreasing enrollment in comprehensive coverage. Further, commenters raised concerns in response to the 2018 Guidance that expressed generalized concern that the

<sup>110</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF>.

2018 Guidance permitted alternative coverage options that can be underwritten and do not meet EHB standards. In addition, commenters were concerned that measures taken to facilitate coverage in alternative plan options (for example, allowing the use of subsidies for such coverage) would result in fewer comprehensive plans on the market, and that those comprehensive plans would become less affordable. In light of the concerns raised by commenters and the E.O.s, the Departments are proposing new policies in this proposed rule that would allow states flexibility to develop waiver plans to meet their needs and expand coverage, lower costs, and increase access to high-quality health care with comprehensive benefits.

Given the current policy goals, as well as the Departments' further consideration of comments received on the 2022 Payment Notice, the Departments are proposing new policies for how the Departments would evaluate whether a state's section 1332 waiver plan satisfies each of the guardrails, as outlined in more detail later in this section. Overall, the Departments are proposing that the "coverage" to be provided and evaluated in each guardrail should be interpreted the same way in each subparagraph of Section 1332(b)(1)(A)–(C) for consistency. Thus, the Departments are proposing in 31 CFR 33.108(f)(3)(iv)(A) through (C) and 45 CFR 155.1308(f)(3)(iv)(A) through (C) to interpret "provide" and "coverage" to mean the same thing for the coverage, comprehensiveness, and affordability guardrails and that, to be approved, a waiver must be projected to provide coverage that is as comprehensive and affordable as would have been provided absent the waiver and to the same number of residents.

Similarly, given the current COVID-19 PHE, this Administration is focused on the response to the PHE and on helping increase enrollment in comprehensive, affordable health insurance coverage. The ARP made numerous changes to the ACA to expand access to health insurance coverage and lower costs. Specifically, the ARP temporarily expanded eligibility for and increased the value of APTC/PTC, enabling previously ineligible consumers to qualify for help paying for health coverage and increasing assistance to eligible individuals already enrolled in Exchange plans. These changes have already increased enrollment through

the Exchanges,<sup>111</sup> and the Departments are of the view that this law will continue to increase enrollment through the Exchanges as the ARP's enhanced subsidies lower the costs of coverage for millions of Americans and change the incentives to seek and maintain comprehensive health insurance coverage. In addition, increased affordability and expansion of access to comprehensive health insurance coverage will better support enrollment of historically uninsured communities—especially those who have faced significant health disparities—in such coverage, thereby improving access to health care during and beyond the COVID-19 PHE. This Administration has also sought to strengthen the ACA and increase enrollment by directing the establishment of a special enrollment period, which is open from February 15, 2021 through August 15, 2021, for Exchanges using the *HealthCare.gov* platform (COVID special enrollment period). Over 1.2 million Americans have already signed up for coverage on *HealthCare.gov* during the COVID special enrollment period.<sup>112</sup> To promote the special enrollment period, CMS is spending approximately \$100 million on outreach and education, including broadcast, radio, and digital advertising to reach the uninsured, and also launched parallel outreach efforts through stakeholders and partners to increase education and awareness across communities on the COVID special enrollment period.<sup>113</sup> Earlier this year, CMS made approximately \$2.3 million in additional funding available to current Navigator grantees in FFEs to support the outreach, education, and enrollment efforts around the COVID special enrollment period.<sup>114</sup> Additionally, CMS recently announced that it is making \$80 million in grant

funding available to the FFE Navigator program for the 2022 plan year through the 2021 Navigator Notice of Funding Opportunity.<sup>115</sup> This represents an eight-fold increase in funding from the previous year. Taken together, these policies, including the increased subsidies available under the ARP, the COVID special enrollment period, and the increased federal investment in the FFE Navigator program, have already led to, and are expected to continue to lead to, increased enrollment through the Exchanges.

The Departments are of the view that rescinding the 2018 Guidance, repealing the previous codification of its guardrail interpretations in part 1 of the 2022 Payment Notice final rule, and proposing new policies and interpretations aligns with the Administration's goals to strengthen the ACA and increase enrollment in comprehensive, affordable health coverage among the remaining underinsured and uninsured. The Departments are also of the view that during a pandemic, as Americans continue to battle COVID-19 and millions of Americans are facing uncertainty and experiencing new health problems, it is even more critical that Americans have meaningful access to high-quality, comprehensive and affordable health coverage options.

The Departments are also proposing to modify 31 CFR 33.108(f)(3)(iv) and 45 CFR 155.1308(f)(3)(iv) to remove the reference, as codified under part 1 of the 2022 Payment Notice final rule, to interpretive guidance published by the Departments. This proposal is in line with the Departments' efforts to provide supplementary information about the requirements that must be met for the approval of a section 1332 waiver and the Secretaries' application review procedures. Because the Departments are of the view that the 2018 Guidance and the incorporation of its guardrail interpretations into regulations could result in the Departments approving section 1332 waivers that would result in fewer residents in those states enrolling in comprehensive and affordable coverage, that those interpretations do not represent the best fulfillment of congressional intent behind the statutory guardrails, that they are inconsistent with the policy intentions of E.O. 14009 and E.O. 13985, and that it is appropriate to address concerns raised by commenters on the 2018 Guidance, the Departments

propose to remove the reference to the 2018 Guidance.

Under this proposal the Departments would rely upon the statute and regulations, as well as the Departments' interpretive policy statements as outlined in the applicable notice and comment rulemaking, in reviewing section 1332 waiver applications.

The Departments seek comment on these proposals. The Departments also solicit comment on whether there are policies that meet the statutory guardrails of section 1332 waivers that the Departments could consider that would encourage states to find innovative ways to use section 1332 waivers to focus on equity and expand access to comprehensive coverage for their residents. In addition, the Departments considered whether any affected parties could be impacted by the proposed changes in policy interpretations outlined in this rule. The Departments are of the view that both states with approved section 1332 waivers and states that are considering section 1332 waivers would be minimally impacted by these proposed changes in policy. The Departments solicit comment on the impact to stakeholders.

a. Comprehensive Coverage (31 CFR 33.108(f)(3)(iv)(A) and 45 CFR 155.1308(f)(3)(iv)(A))

The Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(A) and 45 CFR 155.1308(f)(3)(iv)(A) to remove the comprehensiveness guardrail interpretations as adopted in part 1 of the 2022 Payment Notice final rule. In addition, the Departments are proposing, through preamble, policies and interpretations relating to the requirements for the comprehensive coverage guardrail that are similar to the policies and interpretations outlined in the 2015 Guidance. Specifically, the Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(A) and 45 CFR 155.1308(f)(3)(iv)(A) such that to satisfy the comprehensive coverage requirement, the Departments, as applicable, must determine that the section 1332 waiver will provide coverage that is at least as comprehensive overall for residents of the state as coverage absent the waiver. The Departments' proposed policies and interpretations related to the comprehensiveness guardrail are as follows:

To meet the comprehensiveness guardrail, health care coverage under a section 1332 waiver would be required to be forecast to be at least as

<sup>111</sup> 2021 Marketplace Special Enrollment Period Report, June 14, 2021 <https://www.cms.gov/newsroom/fact-sheets/2021-marketplace-special-enrollment-period-report-2>.

<sup>112</sup> Data reflects enrollment as of May 31, 2021: <https://www.hhs.gov/about/news/2021/06/14/four-ten-new-consumers-spend-10-or-less-month-healthcaregov-coverage-following-implementation-american-rescue-plan-tax-credits.html>.

<sup>113</sup> On January 28, 2021, CMS announced \$50 million for outreach and marketing for the COVID special enrollment period: <https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency>. On April 1, 2021 HHS announced an additional \$50 million to further bolster the COVID special enrollment period campaign and promote the lower premiums under the ARP: <https://www.cms.gov/newsroom/press-releases/hhs-secretary-becerra-announces-reduced-costs-and-expanded-access-available-marketplace-health>.

<sup>114</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-additional-navigator-funding-support-marketplace-special-enrollment-period>.

<sup>115</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-80-million-funding-opportunity-available-navigators-states-federally-facilitated-0>.

comprehensive overall for residents of the state as coverage absent the waiver.

Comprehensiveness refers to the scope of benefits provided by the coverage and would be measured by the extent to which coverage meets the requirements for EHBs as defined in section 1302(b) of the ACA and offered through Exchanges established by Title I of ACA, or, as appropriate, Medicaid or CHIP standards. The impact on all state residents would be considered, regardless of the type of coverage they would have had absent the section 1332 waiver.

Comprehensiveness would be evaluated by comparing coverage under the section 1332 waiver to the state's EHB benchmark (for the applicable plan year), selected by the state (or if the state does not select a benchmark, the default base-benchmark plan) pursuant to 45 CFR 156.100, as well as to, in certain cases, the coverage provided under the state's Medicaid or CHIP programs.<sup>116</sup> A section 1332 waiver would not satisfy the comprehensiveness requirement if the waiver decreases: (1) The number of residents with coverage that is at least as comprehensive as the benchmark in all ten EHB categories; (2) for any of the ten EHB categories, the number of residents with coverage that is at least as comprehensive as the benchmark in that category; or (3) the number of residents whose coverage includes the full set of services that would be covered under the state's Medicaid or CHIP programs, holding the state's Medicaid and CHIP policies constant. That is, the section 1332 waiver could not decrease the number of individuals with coverage that satisfies EHB requirements, the number of individuals with coverage of any particular category of EHB, or the number of individuals with coverage that includes the services

<sup>116</sup> In April 2018, HHS provided states with substantially more options in the selection of an EHB-benchmark plan. As finalized in the 2019 Payment Notice, starting in the 2020 plan year, HHS provided states with additional flexibility in how they select their EHB-benchmark plan. Instead of being limited to 10 options, states are now able to choose from the 50 EHB-benchmark plans used for the 2017 plan year in other states or select specific EHB categories, such as drug coverage or hospitalization, from among the categories used for the 2017 plan year in other states. Additionally, states are able to build their own set of benefits that could potentially become their EHB-benchmark plan, subject to certain scope of benefits requirements.

covered under the state's Medicaid or CHIP programs.

Assessment of whether a section 1332 waiver proposal meets the comprehensiveness requirement would also take into account the effects across different groups of state residents, and, in particular, effects on those vulnerable and underserved residents, including low-income individuals, older adults, those with serious health issues or who have a greater risk of developing serious health issues, and people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.<sup>117</sup> A section 1332 waiver would be highly unlikely to be approved by the Secretaries under the proposed interpretation outlined in this rule if the waiver would reduce the comprehensiveness of coverage provided to these types of vulnerable or underserved groups, even if the waiver maintained comprehensiveness in the aggregate. Under the proposed interpretation in this rule, this condition generally must be forecast to be met in each year that the section 1332 waiver would be in effect.

Consistent with 31 CFR 33.108(f) and 45 CFR 155.1308(f), the section 1332 waiver application must include analysis and supporting data that establishes that the section 1332 waiver satisfies this requirement. This includes an explanation of how the benefits offered under the section 1332 waiver differ from the benefits provided absent the waiver (if the benefits differ at all) and how the state determined the benefits to be as "comprehensive."

As discussed previously in this section of this preamble, the policies and interpretations of the comprehensiveness guardrail outlined in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice find

<sup>117</sup> These groups include individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

rule, were in line with the Administration's priorities at the time to promote private market competition and increase consumer choice. Under those policies, analysis of comprehensiveness and affordability of coverage under a section 1332 waiver focused on the nature of coverage that is made available to state residents (access to coverage), rather than on the coverage that residents actually purchase. The plans that could be offered to individuals under section 1332 waivers as codified in part 1 of the 2022 Payment Notice final rule could therefore allow for more individuals to enroll in medically underwritten plans that only offer limited benefits, which is inconsistent with the goal of E.O. 14009 to reduce barriers for expanding comprehensive affordable coverage.

In response to the proposal in the 2022 Payment Notice Proposed Rule, commenters raised concerns that alternative plan options (which could include medically underwritten plans) can terminate or deny coverage based on health status, which would tend to affect high-risk individuals.

Commenters asserted that, this possibility puts individuals with greater medical needs at risk of going without effective coverage for their health care needs. Some commenters expressed concern that the potential market effects would have a disparate impact on vulnerable populations, especially low-income consumers and those with pre-existing conditions. Additionally, these commenters expressed concern that a disparate impact on any particular group would not necessarily cause the Departments to deny a section 1332 waiver application, even though the impact on vulnerable population groups would be taken into account.

The Departments are of the view that the current interpretation of the comprehensiveness guardrail is inconsistent with the goal of E.O. 14009 to reduce barriers for expanding comprehensive affordable coverage. The Departments are also of the view that the current interpretation of the guardrail is inconsistent with the goal of E.O. 13985 to pursue a comprehensive approach to advancing equity and could create barriers to health coverage for people of color and underserved groups.

The proposed changes in this rule are intended to align with the President's instructions in E.O. 14009 and E.O. 13985 to adopt policies to strengthen the implementation of the ACA and ensure high-quality health care coverage is accessible and affordable for every American. The Departments are of the view that the proposals outlined in this proposed rule would further support states providing consumers with comprehensive, high-quality health care coverage that will better protect consumers with pre-existing conditions and will help protect consumers from unexpected and expected medical needs. Further, the proposals outlined in this proposed rule would further the goal that consumers with pre-existing conditions, particularly racial and ethnic minorities who are 1.5 to 2.0 times more likely than whites to have major chronic diseases<sup>118</sup> and as such pre-existing conditions, maintain comprehensive coverage.

The Departments seek comment on these proposed policies and interpretations related to the comprehensiveness guardrail. The Departments are of the view that this proposal would have minimal impact on both states with section 1332 waivers under development and states with approved waivers. The Departments solicit comment on the impact to stakeholders.

**b. Affordability (31 CFR 33.108(f)(3)(iv)(B) and 45 CFR 155.1308(f)(3)(iv)(B))**

The Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(B) and 45 CFR 155.1308(f)(3)(iv)(B) to remove the affordability guardrail interpretations as codified in part 1 of the 2022 Payment Notice final rule. In addition, the Departments are proposing, through preamble, policies and interpretations relating to the requirements for the affordability coverage guardrail that are similar to the policies and interpretations outlined in the 2015 Guidance. Specifically, the Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(B) and 45 CFR 155.1308(f)(3)(iv)(B) such that to satisfy the affordability requirement, the Departments, as applicable, must determine that the section 1332 waiver would provide coverage that is at least as affordable overall for residents of the state as coverage absent the waiver. The Departments' proposed policies and

<sup>118</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3794652/#:~:text=more%20chronic%20diseases-.Racial%2Fethnic%20minorities%20are%201.5%20to%202.0%20times%20more%20likely,seem%20to%20be%20getting%20worse.>

interpretations related to the affordability guardrail are as follows:

To meet the affordability guardrail, health care coverage under the section 1332 waiver would be required to be forecast to be as affordable overall for state residents as coverage absent the waiver.

Affordability refers to state residents' ability to pay for health care expenses relative to their incomes and would generally be measured by comparing each individual's expected out-of-pocket spending for health care and services to their incomes. Out-of-pocket spending for health care includes premiums (or equivalent costs for enrolling in coverage), and spending such as deductibles, co-pays, and co-insurance, associated with the coverage or direct payments for health care. Spending on health care services that are not covered by a health plan or health coverage could also be taken into account if they are affected by the section 1332 waiver proposal. The impact on all state residents would be required to be considered, regardless of the type of coverage they would have had absent the section 1332 waiver. Under the proposed policies and interpretation in this rule, this condition generally must be forecast to be met in each year that the section 1332 waiver would be in effect.

Section 1332 waivers would be evaluated not only based on how they affect affordability on average, but also on how they affect the number of individuals with large health care spending burdens relative to their incomes. Increasing the number of state residents with large health care spending burdens would cause a section 1332 waiver proposal to fail the affordability requirement, even if the waiver would increase affordability for many other state residents. Given that eligibility for comprehensive coverage among the uninsured varies across racial and ethnic groups, the Departments' assessment of whether the proposal meets the affordability requirement would also take into account the effects across different groups of state residents, and, in particular, effects on vulnerable or underserved residents, including low-income individuals, older adults, those with serious health issues or who have a greater risk of developing serious health issues, and people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.<sup>119</sup> A section 1332

<sup>119</sup> These groups include individuals who belong to underserved communities that have been denied

waiver would be highly unlikely to be approved by the Secretaries under the proposed policies and interpretations set forth in this rule if it reduces affordability for these vulnerable or underserved groups, even if the waiver would maintain affordability in the aggregate. In addition, a section 1332 waiver would fail to meet the affordability guardrail if it would reduce the number of individuals with coverage that provides a minimal level of protection against excessive cost sharing. In particular, section 1332 waivers that reduce the number of people with insurance coverage that provides both an actuarial value equal to or greater than 60 percent and an out-of-pocket maximum that complies with section 1302(c)(1) of the ACA, would fail to meet this guardrail under the proposed policies and interpretations set forth in this rule. Section 1332 waivers that reduce the number of people with coverage that meets the affordability requirements set forth in sections 1916 and 1916A of the Act, as codified in 42 CFR part 447, subpart A, while holding the state's Medicaid policies constant would also fail under the affordability guardrail.

Consistent with 31 CFR 33.108(f) and 45 CFR 155.1308(f), the section 1332 waiver application must include analysis and supporting data that establishes that the waiver satisfies this requirement. This includes information on estimated individual out-of-pocket costs (premium and out-of-pocket expenses for deductibles, co-payments, co-insurance, co-payments and plan differences) by income, health expenses, health insurance status, and age groups, absent the section 1332 waiver and with the waiver. The expected changes in premium contributions and other out-of-pocket costs and the combined impact of changes in these components should be identified separately. The application should also describe any changes in employer contributions to health coverage or in wages expected under the section 1332 waiver. The application should identify any types of individuals for whom affordability of coverage would be reduced by the section 1332 waiver.

such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

As discussed previously in this section of this preamble, the affordability guardrail interpretation outlined in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice final rule aimed to increase consumer choice to allow states to provide access to health insurance coverage at different prices points and benefits levels. The Departments are of the view that this interpretation of the affordability guardrail is inconsistent with the goal of E.O. 14009 to reduce barriers for expanding comprehensive affordable coverage. The current interpretation could allow for more individuals, including potentially those with pre-existing conditions, to enroll in medically underwritten plans that charge higher out-of-pocket costs, which is inconsistent with the goal of the E.O. to reduce barriers for expanding comprehensive affordable coverage. The proposed changes in this rule are intended to align with the President's instruction in E.O. 14009 to adopt policies to strengthen the implementation of the ACA and ensure high-quality health care is accessible and affordable for every American. The Departments are of the view that the proposals outlined in this proposed rule would further support states providing consumers with comprehensive, high-quality affordable health care coverage that will better protect consumers with pre-existing conditions, and will help protect consumers from unexpected and expected medical needs.

The Departments seek comment on these proposed policies and interpretations related to the affordability guardrail. The Departments are of the view this proposal would have minimal impact on both states with section 1332 waivers under development and states with approved waivers. The Departments solicit comment on the impact to stakeholders.

c. Coverage (31 CFR 33.108(f)(3)(iv)(C) and 45 CFR 155.1308(f)(3)(iv)(C))

The Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(C) and 45 CFR 155.1308(f)(3)(iv)(C) to remove the coverage guardrail interpretations codified in part 1 of the 2022 Payment Notice final rule. In addition, the Departments are proposing, through preamble, policies and interpretations relating to the requirements for the coverage guardrail that are similar to the policies and interpretations outlined in the 2015 Guidance. Specifically, the Departments are proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(B) and 45 CFR 155.1308(f)(3)(iv)(B) such that to satisfy

the scope of coverage requirement, the Departments, as applicable, must determine that the section 1332 waiver would provide coverage to a comparable number of state residents under the waiver as would have coverage absent the waiver. The Departments' proposed policies and interpretations related to the coverage guardrail are as follows:

To meet the coverage guardrail, a comparable number of state residents would be required to be forecast to have coverage under the section 1332 waiver as would have had coverage absent the waiver.

Coverage refers to minimum essential coverage as defined in 26 U.S.C. 5000A(f). For this purpose, "comparable" would mean that the forecast of the number of covered individuals is no less than the forecast of the number of covered individuals absent the section 1332 waiver. This condition generally would be required to be forecast to be met in each year that the section 1332 waiver would be in effect.

The impact on all state residents would be considered, regardless of the type of coverage they would have had absent the section 1332 waiver. For example, while a section 1332 waiver may not change the terms of a state's Medicaid coverage or change existing Medicaid demonstration authority, changes in Medicaid enrollment—whether increases or decreases—that result from a section 1332 waiver, holding the state's Medicaid policies constant, would be considered in evaluating the number of residents with coverage under a waiver.

Assessment of whether the section 1332 waiver application covers a comparable number of individuals would also take into account the effects across different groups of state residents, and, in particular, effects on vulnerable or underserved residents, including low-income individuals, older adults, those with serious health issues or who have a greater risk of developing serious health issues, and people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.<sup>120</sup> A section

<sup>120</sup> These groups include individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See [https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/)

1332 waiver would be highly unlikely to be approved by the Secretaries if it would reduce coverage for these populations, even if the waiver would provide coverage to a comparable number of residents overall. Finally, analysis under the coverage requirement would need to take into account whether the section 1332 waiver sufficiently prevents gaps in or discontinuations of coverage.

Consistent with 31 CFR 33.108(f) and 45 CFR 155.1308(f), the section 1332 waiver application must include analysis and supporting data that establishes that the waiver satisfies this requirement, including information on the number of individuals covered by income, health expenses, health insurance status, and age groups, under current law and under the waiver, including year-by-year estimates. The application should identify any types of individuals, including vulnerable and underserved individuals, who are more or less likely to be covered under the waiver than under current law.

As discussed previously in this section of this preamble, under the coverage guardrail interpretation outlined in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice final rule, the guardrail is met if at least as many residents are enrolled in health coverage, including both comprehensive and less comprehensive health plans, as would be enrolled absent the waiver. That interpretation was intended to promote choice among a wide range of plans to ensure that consumers can enroll in coverage that is right for them. As such, the interpretations set forth in the 2018 Guidance and codified in part 1 of the 2022 Payment Notice final rule permits states to provide access to less comprehensive or less affordable coverage as an additional option for their residents to choose. Under the current policy, as long as a comparable number of residents are projected to be covered as would have been covered absent the section 1332 waiver, the coverage guardrail would be met. The Departments are of the view that this interpretation of the coverage guardrail is inconsistent with the goal of E.O. 14009 to reduce barriers for expanding comprehensive affordable coverage. The current interpretation could allow for more individuals to enroll in medically underwritten plans that offer limited benefits, charge higher out-of-pocket costs, or both, which is inconsistent with the goal of the E.O. to reduce barriers for expanding comprehensive, underserved-communities-through-the-federal-government/.

high-quality, affordable coverage. The proposed changes in this rule are intended to align with the President's instruction in E.O. 14009 to adopt policies to strengthen the implementation of the ACA and ensure high-quality health care is accessible and affordable for every American. The Departments are of the view that the proposals outlined in this proposed rule would further support states providing consumers with comprehensive, high-quality affordable health care that will better protect consumers with pre-existing conditions and will help protect consumers from unexpected and expected medical costs.

The Departments seek comment on these proposed policies and interpretations related to the coverage guardrail. The Departments are of the view that this proposal would have minimal impact on both states with section 1332 waivers under development and states with approved waivers. The Departments solicit comment on the impact to stakeholders.

d. Deficit Neutrality (31 CFR 33.108(f)(3)(iv)(D) and 45 CFR 155.1308(f)(3)(iv)(D))

The Departments are not proposing to modify the regulations at 31 CFR 33.108(f)(3)(iv)(D) and 45 CFR 155.1308(f)(3)(iv)(D) for the deficit neutrality guardrail, but are proposing, through preamble, policies and interpretations relating to the requirements for the deficit neutrality guardrail consistent with the policies outlined in the 2015 and 2018 Guidance. The Departments' proposed policies and interpretations related to the deficit neutrality guardrail are as follows:

Under the deficit neutrality guardrail, the projected federal spending net of federal revenues under the section 1332 waiver is required to be equal to or lower than projected federal spending net of federal revenues in the absence of the waiver.

The estimated effect on federal revenue would be required to include all changes in income, payroll, or excise tax revenue, as well as any other forms of revenue (including user fees), that would result from the proposed section 1332 waiver. Estimated effects would include, for example, changes in the amounts the federal government pays in PTC, small business tax credits, or other health coverage tax credit; changes in the amount of employer shared responsibility payments and excise taxes on high-cost employer-sponsored plans collected by the federal government; and changes in income and payroll taxes resulting from changes in

tax exclusions for employer-sponsored insurance and in deductions for medical expenses.

The effect on federal spending would include all changes in federal financial assistance (PTC, small business tax credits, or CSRs) and other direct spending, such as changes in Medicaid spending (while holding the state's Medicaid policies constant) that would result from the changes made through the proposed section 1332 waiver. Projected federal spending under the section 1332 waiver proposal would also need to include all administrative costs to the federal government, including any changes in IRS administrative costs, federal Exchange administrative costs, or other administrative costs associated with the waiver or alleviated by the waiver.

Under the proposed policies and interpretations outlined in this rule, section 1332 waivers must not increase the federal deficit over the period of the waiver (which may not exceed 5 years unless renewed) or in total over the 10-year budget plan submitted by the state as part of the section 1332 waiver application. Consistent with the policies in the 2015 Guidance and in the 2018 Guidance, the 10-year budget plan would be required to describe for both the period of the waiver and for the 10-year budget the projected federal spending and changes in federal revenues under the section 1332 waiver and the projected federal spending and changes in federal revenues in the absence of the waiver for each year of the 10 years.

The 10-year budget plan should assume the section 1332 waiver would continue permanently, but should not include federal spending or savings attributable to any period outside of the 10-year budget window. A variety of factors, including the likelihood and accuracy of projected spending and revenue effects and the timing of these effects, would be considered when evaluating the effect of the section 1332 waiver on the federal deficit. A section 1332 waiver that increases the deficit in any given year is less likely to meet the proposed deficit neutrality requirement than one that does not.

Upon consideration, the approach outlined in part 1 of the 2022 Payment Notice final rule is consistent with E.O. 14009 as it will not reduce coverage or otherwise undermine the ACA and Medicaid.

The Departments seek comment on these proposed policies and interpretations related to the deficit neutrality guardrail. The Departments believe this proposal would have minimal impact on both states with

section 1332 waivers under development and states with approved waivers. The Departments solicit comment on the impact to stakeholders.

4. Section 1332 Application Procedures (31 CFR 33.108(f)(4) and 45 CFR 155.1308(f)(4))

a. Actuarial and Economic Analysis (31 CFR 33.108(f)(4)(i-iii) and 45 CFR 155.1308(f)(4)(i-iii))

As required under 31 CFR 33.108(f)(4)(i-iii) and 45 CFR 155.1308(f)(4)(i-iii), states must include actuarial analyses and actuarial certifications, economic analyses, and the data and assumptions used to demonstrate and support the state's estimates that the proposed section 1332 waiver will comply with the statutory guardrails. The Departments are not proposing any regulatory changes to 31 CFR 33.108(f)(4)(i-iii) and 45 CFR 155.1308(f)(4)(i-iii), but are proposing, through preamble, policies relating to the requirements for the actuarial and economic analyses that are similar to the policies outlined in the 2015 and 2018 Guidance. We are proposing these policies to help ensure that the Departments have the appropriate and necessary information to measure the impact of waivers on the guardrails, particularly related to coverage. This information is especially important in light of the goal of E.O. 14009 to provide more comprehensive affordable coverage to consumers. In addition, the Departments encourage states to include in their analysis whether the proposed section 1332 waiver would increase health equity in line with E.O. 13985. The proposed policies are as follows:

Consistent with the 2015 and 2018 Guidance, the determination of whether a proposed section 1332 waiver meets the requirements under section 1332 and the calculation of the pass-through funding amount would be made using generally accepted actuarial and economic analytic methods, such as micro-simulation. The analysis would rely on assumptions and methodologies that are similar to those used to produce the baseline and policy projections included in the most recent President's Budget (or Mid-Session Review), but adapted as appropriate to reflect state-specific conditions. As provided in 31 CFR 33.108(f)(4)(i) and 45 CFR 155.1308(f)(4)(i), the state must include actuarial analyses and actuarial certifications to support the state's estimates that the proposed section 1332 waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement. In this

proposed rule, the Departments propose that, consistent with the 2018 Guidance, these actuarial analyses and certifications should be conducted by a member of the American Academy of Actuaries.

The Departments' analysis of whether a proposed section 1332 waiver meets the requirements under section 1332 would be based on state-specific estimates of the current level and distribution of population by the relevant economic and demographic characteristics, consistent with the 2015 and 2018 Guidance, including income and source of health coverage. It would generally use federal estimates of population growth, and economic growth as published in the Analytical Perspectives volume released as part of the President's Budget ([https://www.whitehouse.gov/omb/budget/Analytical\\_Perspectives](https://www.whitehouse.gov/omb/budget/Analytical_Perspectives)) and health care cost growth (<https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/index.html?redirect=/NationalHealthExpendData/>) to project the initial state variables through the 10-year budget plan window. However, in limited circumstances where it is expected that a state will experience substantially different trends than the nation as a whole in the absence of a section 1332 waiver, the Secretaries may determine that state-specific assumptions will be used.

Consistent with the 2018 Guidance and largely similar to the 2015 Guidance, estimates of the effect of the section 1332 waiver would assume, in accordance with standard estimating conventions, that macroeconomic variables like population, output, and labor supply are not affected by the waiver. However, estimates would take into account, as appropriate, other changes in the behavior of individuals, employers, and other relevant entities induced by the section 1332 waiver where applicable, including employer decisions regarding what coverage (and other compensation) they offer and individual decisions regarding whether to take up coverage. The same state-specific and federal data, assumptions, and model are used to calculate comprehensiveness, affordability, and coverage, and relevant state components of federal taxes and spending under the section 1332 waiver and under current law.

The analysis and information submitted by the state as part of the section 1332 waiver application would conform to these standards as outlined in this proposed rule. Consistent with the 2015 and 2018 Guidance, the

application would describe all modeling assumptions used, sources of state-specific data, and the rationale for any deviation from federal forecasts. A state may be required under 31 CFR 33.108(f)(4)(vii) and 45 CFR 155.1308(f)(4)(vii) to provide to the Secretaries copies of any data used for their section 1332 waiver analyses that are not publicly available so that the Secretaries can independently verify the analysis produced by the state.

In this proposed rule, the Departments propose that, consistent with the 2018 Guidance, for each of the guardrails, the state would clearly explain its estimates with and without the section 1332 waiver. The actuarial and economic analyses would be required to compare comprehensiveness, affordability, coverage, and deficit neutrality with and without the section 1332 waiver. The deficit neutrality analysis would specifically examine net federal spending and revenues under the section 1332 waiver to those measures absent the waiver (the baseline) for each year of the waiver. If the state is submitting a section 1332 waiver application for less than a 5-year period, the actuarial analysis could be submitted for the period of the waiver. The Departments, in accordance with their regulations, could request additional information or data in order to conduct their assessments.

The state should also provide a description of the models used to produce these estimates, including data sources and quality of the data, key assumptions, and parameters for the section 1332 waiver. Consistent with the 2018 Guidance, the Departments are not proposing to prescribe any particular method of actuarial analysis to estimate the potential impact of a section 1332 waiver. However, the state should explain its modeling in sufficient detail to allow the Secretaries to evaluate the accuracy of the state's modeling and the comprehensiveness and affordability of the coverage available under the state's section 1332 waiver proposal. As permitted under 31 CFR 33.108(g) and 45 CFR 155.1308(g), the state may be required to provide, upon request by the Secretaries, data or other information that it used to make its estimates, including an explanation of the assumptions used in the actuarial analysis.

The Departments seek comment on these proposals.

b. Implementation Timeline and Operational Considerations (31 CFR 33.108(f)(4)(iv) and 45 CFR 155.1308(f)(4)(iv))

As required under 31 CFR 33.108(f)(4)(iv) and 45 CFR 155.1308(f)(4)(iv), states must include in their applications for initial approval of a section 1332 waiver a detailed draft timeline for the state's implementation of the proposed waiver. In this proposed rule, the Departments are not proposing any regulatory changes to 31 CFR 33.108(f)(4)(iv) and 45 CFR 155.1308(f)(4)(iv). Rather, the Departments are proposing the operational considerations in preamble that states should take into account when developing their waiver application, waiver plan, and implementation timeline. Specifically, the Departments are proposing these operational considerations to provide additional information regarding how HHS and the IRS may be able to support a state in implementing a section 1332 waiver plan so states can take this information into consideration as it relates to their implementation timeline. These proposals would help to ensure that the Departments have the appropriate and necessary information to measure the impact of proposed waivers on the statutory guardrails, particularly related to coverage. This information is especially important in light of the goal of E.O. 14009 to provide more comprehensive affordable coverage to consumers. In addition, the Departments encourage states to include in their analysis whether the proposed section 1332 waiver would increase health equity in line with E.O. 13985. Upon consideration, the approach proposed with regard to operational considerations is revised from the 2018 Guidance with regard to the use of the Exchange information technology platform (the federal platform) and IRS operational considerations to maintain smooth operations of the Exchange consistent with E.O. 14009 and this Administration's goals to protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American.

The Departments seek comment on these proposals.

i. Use of Federal Platform Technology

HHS operates the Federal platform utilized by FFEs and by some State Exchanges for eligibility and enrollment functions. For technical, operational, and fiscal efficiency, the Federal platform is generally designed to support uniform administration across



the states that utilize it. With that noted, HHS would be open to inquiries and further discussion with states that are developing section 1332 waiver proposals and are interested in potential technical collaboration. For example, over the past few years HHS has offered assistance to states implementing state-based reinsurance programs.<sup>121</sup> Currently, states can request that the federal government assist with the calculation of issuers' eligible state reinsurance payments based on the state reinsurance parameters as part of the state's approved section 1332 waiver plan. Under this arrangement, states are still responsible for making reinsurance payments to issuers and otherwise administering and overseeing their programs.

States that are interested in this assistance should notify HHS early in the process about the state's interest and the state's parameters (that is, claims cost-based, conditions-based, or other) for HHS to assess the feasibility of providing this support. Should a final proposal involve any customized or specialized federal technical or operational capabilities, states would be responsible for funding the development and operation of these capabilities under the Intergovernmental Cooperation Act (ICA).<sup>122</sup> Under the ICA, a federal agency generally may provide certain technical and specialized services to state governments, so long as the state covers the full costs of those services. Accordingly, where a state intends to rely on HHS for technical services related to its section 1332 waiver proposal, the state would be required to cover HHS's costs. For example, states implementing state-based reinsurance programs that request technical or specialized services from HHS with respect to calculating state reinsurance payments are responsible for the federal costs associated with providing this service, including development, implementation, maintenance, operations, and customer support. For this reason, under this proposal, should HHS and a state agree to such technical or specialized services to support an approved section 1332 waiver plan, the Departments would not consider costs for HHS services covered under the ICA as an increase in federal spending resulting from the state's waiver plan for

purposes of the deficit neutrality analysis.

As noted in the preamble of this proposed rule for the deficit neutrality guardrail, costs associated with changes to federal administrative processes that are not covered under the ICA would be taken into account in determining whether a waiver application satisfies the deficit neutrality requirement. Regulations at 31 CFR 33.108(f)(4) and 45 CFR 155.1308(f)(4), require that such costs be included in the 10-year budget plan submitted by the state. As specific section 1332 waiver proposals are submitted, HHS would work closely with states to determine which federal costs are covered under the ICA (and thus are not subject to deficit neutrality guardrail), and which are not covered under the ICA (and thus are subject to the deficit neutrality guardrail).

#### ii. IRS Functionality

Certain changes that affect IRS administrative processes may make a section 1332 waiver proposal infeasible for the Departments to accommodate. At this time, the IRS generally is not able to administer different sets of federal tax rules for different states. As a result, while a state may propose to entirely waive the application of one or more of the federal tax provisions listed in section 1332 for taxpayers in the state, it is generally not feasible to design a section 1332 waiver that would require the IRS to administer a program that alters these provisions for taxpayers in the state.

In some limited circumstances, the IRS may be able to accommodate small adjustments to the existing systems for administering federal tax provisions. However, it is generally not feasible to have the IRS administer a different set of PTC eligibility or PTC computation rules for individuals in a particular state. Thus, states contemplating a waiver proposal that includes a modified version of a federal tax provision could consider waiving the provision entirely and creating a subsidy program administered by the state as part of a section 1332 waiver proposal.

In addition, a section 1332 waiver proposal that partly or completely waives one or more federal tax provisions in a state may create administrative costs for the IRS. As noted in the preamble for the deficit neutrality guardrail of this proposed rule, costs associated with changes to federal administrative processes would be taken into account in determining whether a waiver application satisfies the deficit neutrality requirement. Regulations at 31 CFR 33.108(f)(4) and

45 CFR 155.1308(f)(4), require that such costs be included in the 10-year budget plan submitted by the state. States contemplating to waive any part of a federal tax provision should engage with the Departments early in the section 1332 waiver application process to assess whether the waiver proposal is feasible for the IRS to implement, and, if applicable, to assess the administrative costs to the IRS of implementing the waiver proposal.

#### 5. Public Input on Waiver Proposals (31 CFR 33.112 and 45 CFR 155.1312)

Section 1332(a)(4)(B)(i) of the ACA, and regulations at 31 CFR 33.112 and 45 CFR 155.1312, require states to provide a public notice and comment period for a section 1332 waiver application sufficient to ensure a meaningful level of public input prior to submitting an application. In this proposed rule, the Departments are not proposing any regulatory changes to 31 CFR 33.112 and 45 CFR 155.1312. Under the current requirements, as part of the state's public notice and comment period, a state with one or more federally-recognized tribes must conduct a separate process for meaningful consultation with such tribes.<sup>123</sup> In addition, a state must make available, at the beginning of its public notice and comment period, through its website or other effective means of communication, a public notice that includes all of the information outlined in 31 CFR 33.112(b) and 45 CFR 155.1312(b). The state must also update this information, as appropriate. After issuance of this notice and prior to submission of a new section 1332 waiver application, the state must conduct public hearings and provide interested parties an opportunity to learn about and comment on the contents of the state's section 1332 waiver application.<sup>124</sup> Because section 1332 waiver applications may vary significantly in their complexity and breadth, the regulations provide states with flexibility in determining the length of the comment period required to allow for meaningful and robust public engagement. Consistent with federal civil rights law, including Section 1557 of the ACA, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act, section 1332 waiver applications must be posted online in a manner that is accessible to individuals with disabilities. To assist with ensuring website accessibility, states may look to

<sup>121</sup> As of plan year 2021, HHS is providing this support for six states: Colorado, Delaware, Maryland, New Hampshire, North Dakota, and Pennsylvania.

<sup>122</sup> Public Law 90-577 found here: <https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg1098.pdf>.

<sup>123</sup> See 31 CFR 33.112(a)(2) and 45 CFR 155.1312(a)(2).

<sup>124</sup> See 31 CFR 33.112(c) and 45 CFR 155.1312(c).

national standards issued by the Architectural and Transportation Barriers Compliance Board (often referred to as “section 508” standards”),<sup>125</sup> or alternatively, the World Wide Web Consortium’s Web Content Accessibility Guidelines (WCAG)<sup>126</sup> 2.0 Level AA standards.

Through this preamble, the Departments are proposing policies and interpretations for the state public notice requirements. More specifically, the Departments propose to maintain the current standard that the state comment period for a section 1332 waiver application should generally be no less than 30 days.<sup>127</sup> The Departments are of the view that a general standard requiring a minimum 30 day comment period will be sufficient to allow for meaningful and robust public engagement on a state’s waiver application and reiterate that a longer period may be appropriate for complex proposed waiver plans.

Section 1332(a)(4)(B)(iii) of the ACA and its implementing regulations<sup>128</sup> also require the federal government to provide a public notice and comment period, once the Secretaries receive an application. The period must be sufficient to ensure a meaningful level of public input and must not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedure Act, or requirements that are unreasonable or unnecessarily burdensome with respect to state compliance.<sup>129</sup> Under existing regulations, 31 CFR 33.108(f) and 45 CFR 155.1308(f), a submitted section 1332 waiver application will not be deemed received until the Secretaries have made the preliminary determination that the application is complete. As with the comment period described in this preamble, the length of the federal comment period should reflect the complexity of the section 1332 waiver proposal and the Departments similarly propose that the

federal comment period should also generally not be less than 30 days.<sup>130</sup>

The Departments seek comment on these proposals.

#### 6. Modification From the Normal Public Notice Requirements (31 CFR 33.118, 31 CFR 33.120, 45 CFR 155.1318, and 45 CFR 155.1320)

In the November 2020 IFC,<sup>131</sup> the Departments revised regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for waivers under section 1332 during the COVID–19 PHE. In this proposed rule, the Departments are proposing to extend these changes beyond the COVID–19 PHE to allow similar flexibilities in the event of future natural disasters; PHEs; or other emergent situations that threaten consumers’ access to health insurance coverage, consumers’ access to health care, or human life. The Departments propose to consider a situation to be “emergent” if it is both unforeseen and urgent. The Departments are not proposing any changes or soliciting further comments at this time with respect to the flexibility made available in the November 2020 IFC during the COVID–19 PHE. The Departments further clarify that states with approved section 1332 waivers and states seeking approval for proposed waivers will continue to have flexibility to submit requests to the Departments to modify certain public participation requirements during the COVID–19 PHE.<sup>132</sup>

In the 2022 Payment Notice proposed rule,<sup>133</sup> CMS similarly proposed an extension of COVID–19 policy flexibilities, specifically the calculation of plan average premium and state average premium requirements for extending future premium credits (“temporary premium credits”), which was originally published in the November 2020 IFC.<sup>134</sup> In part 2 of the 2022 Payment Notice final rule, HHS finalized these policies to extend

beyond the COVID–19 PHE, to be available, if permitted by HHS, during a future declared PHE.<sup>135</sup> In developing the policies in this rulemaking, the Departments considered extending the section 1332 flexibilities adopted in the November 2020 IFC only to future declared PHEs, but are of the view that these flexibilities, as proposed in this proposed rule to be available on a broader basis in different times of emergent situations, will allow states to use or modify their waivers to respond to state or local emergent situations that may not rise to the level of a national declared PHE. The Departments are of the view that this best aligns with the overall statutory purpose and goals for section 1332 waivers, which are meant to allow states to craft their own unique solutions to respond to the specific health care needs in their respective markets. If the Departments were to limit these flexibilities only to future declared national PHEs, states may not be able to utilize or modify their section 1332 waivers as a tool to address state or local emergent situations or state designated emergencies which may similarly threaten consumers’ access to health insurance coverage, consumers’ access to health care, or human life.

In addition, the flexibilities outlined in this proposed rule are similar to those available under section 1115 demonstrations. Existing regulations at 42 CFR 431.416(g), relating to demonstration programs under section 1115 of the Act, provide that CMS may waive, in whole or in part, the state and federal public notice requirements to expedite a decision on a proposed 1115 demonstration or 1115 demonstration extension request that addresses a natural disaster, PHE, or other sudden emergency threat to human life. The Departments are of the view that using a similar standard for section 1332 waivers will provide states the necessary flexibility to enable them to quickly respond to various emergent situations. For example, some states have used flexibilities for section 1115 demonstrations in emergent situations to address threats to human life such as mudslides and wildfires which were state designated emergencies.

The Secretaries value the importance of the public input process, but also intend to propose to provide reprieve from certain requirements, where appropriate, in emergent situations. Allowing the Secretaries to modify the public notice and post award requirements, as proposed in this rule, would allow states to seek emergency relief in support of the development of

<sup>125</sup> For more information on 508 standards see here: <https://section508.gov/manage/program-roadmap>.

<sup>126</sup> For more information, see the WCAG website at <http://www.w3.org/TR/WCAG20/>.

<sup>127</sup> Notwithstanding this proposal, we clarify that states with approved waivers and states seeking approval for proposed waivers would continue to have flexibility to submit requests to the Departments to modify certain public participation requirements during the COVID–19 PHE. See 31 CFR 33.118 and 45 CFR 155.1318. Also see the November 2020 IFC, 85 FR 71142. As detailed below, in this rulemaking, the Departments propose to extend similar flexibilities during future emergent situations.

<sup>128</sup> See 31 CFR 33.116 and 45 CFR 155.1316.

<sup>129</sup> See section 1332(a)(4)(B)(iii) of the ACA, 31 CFR 33.116(b) and 45 CFR 155.1316(b).

<sup>130</sup> Notwithstanding this proposal, the Departments clarify that states with approved waivers and states seeking approval for proposed waivers would continue to have flexibility to submit requests to the Departments to modify certain public participation requirements during the COVID–19 PHE. See 31 CFR 33.118 and 45 CFR 155.1318. Also see the November 2020 IFC, 85 FR 71142. As detailed below, in this rulemaking, the Departments propose to extend similar flexibilities during future emergent situations.

<sup>131</sup> 85 FR 71142 See <https://www.federalregister.gov/documents/2020/11/06/2020-24332/additional-policy-and-regulatory-revisions-in-response-to-the-covid-19-public-health-emergency>.

<sup>132</sup> See 85 FR 71142.

<sup>133</sup> See 85 FR at 78597–78598 and 78608–78609.

<sup>134</sup> 85 FR 54820.

<sup>135</sup> 86 FR at 24182–24183 and 24202–24203.

quick and innovative ways to ensure consumers across the country have access to health care coverage in the face of unforeseen threats to that coverage. As was noted in November 2020 IFC, HHS and the Department of the Treasury are concerned that past trends that threaten the stability of the individual market risk pool may return, leading some issuers to cease offering coverage on the Exchanges in some states and counties and leading other issuers to increase their rates, leaving some geographic areas with limited or no affordable Exchange coverage options. Permitting the Secretary of HHS and the Secretary of the Treasury to modify the public notice procedures, in part, will help states seeking section 1332 waivers to address such circumstances more quickly and develop innovative ways to ensure consumers have access to affordable health care coverage. Specifically, in this proposed rule, the Departments propose to modify 31 CFR 33.118 and 45 CFR 155.1318 to broaden the Secretaries' authority to modify, in part, the otherwise applicable public notice procedures to expedite a decision on a proposed section 1332 waiver request that is submitted or would otherwise become due during emergent situations, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. The amendments to these regulations further clarify that these proposed flexibilities would be available in future natural disasters; PHEs; and other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life, rather than being limited to only the duration of the COVID-19 PHE. These amendments could also allow states to better utilize section 1332 waivers in emergent situations.

The Departments also propose to modify 31 CFR 33.120(c)(2) and 45 CFR 155.1320(c)(2) to provide the Secretaries with similar authority to modify, in part, otherwise applicable post award public notice requirements for an approved waiver outlined in 31 CFR 33.120(c) and 45 CFR 155.1320(c) when the application of the post award public notice procedures would be contrary to the interests of consumers during a natural disaster; PHE; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life, rather than limiting this flexibility only to the duration of the COVID-19 PHE. These proposals

expand on policies published in the November 2020 IFC that are limited to the COVID-19 PHE.

a. Public Notice Procedures and Approval (31 CFR 33.118 and 45 CFR 155.1318)

Section 1332(a)(4)(B) of the ACA provides that the Secretaries shall issue regulations providing a process for public notice and comment at the state level, including public hearings, and a process for providing public notice and comment at the federal level after the section 1332 waiver application is received by the Secretaries, that are both sufficient to ensure a meaningful level of public input. Current regulations at 31 CFR 33.112 and 45 CFR 155.1312 specify state public notice and participation requirements for proposed section 1332 waiver requests, and 31 CFR 33.116(b) and 45 CFR 155.1316(b) specify the public notice and comment period requirements under the accompanying federal process.

As explained in the November 2020 IFC, the Departments recognize that the current section 1332 waiver regulations regarding state and federal public notice procedures and comment period requirements may impose barriers for states pursuing a proposed waiver request during an emergent situation, such as the COVID-19 PHE or a future natural disaster; PHE; or other emergent situation that threatens consumers' access to health insurance coverage, consumers' access to health care, or human life. It is the mission of the Departments to enhance and protect the health and well-being of all Americans. As such, the Departments are proposing to extend the existing flexibilities codified in regulations to protect public health and access to health insurance coverage and care during the COVID-19 PHE to also apply in the event of a future emergent situation, such as a natural disaster; a PHE; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life. These flexibilities have been important during the COVID-19 PHE and support efforts to prevent the spread of COVID-19 by limiting the need for in-person gatherings related to section 1332 waivers during the PHE. Extending these flexibilities beyond the COVID-19 PHE to future emergent situations is important to similarly help states as they may face uncertainty as to whether their waiver request will be approved in time, given the otherwise applicable state and federal public notice procedures or public participation requirements, to expeditiously reform their health

insurance markets and to protect consumers during a future emergent situation. Some states may not consider more robust changes because they are concerned that the current section 1332 waiver application requirements are too time-consuming or burdensome to pursue during a future emergency or other emergent situation. Therefore, the Departments are of the view that providing similar flexibility to modify certain public notice procedures and participation requirements during a future emergent situation will protect public health and health insurance markets, and will increase flexibility and reduce burdens for states seeking to use section 1332 waivers as a means of innovation for providing coverage, lowering premiums, and improving their health care markets.

Permitting the Secretaries to modify the public notice procedures, in part, when a delay would undermine or compromise the purpose of the proposed section 1332 waiver request and be contrary to the interests of consumers will help states seeking section 1332 waivers to address such circumstances more quickly to ensure consumers have access to affordable health care coverage throughout the emergent situation. As such, the Departments are of the view that, if certain safeguards are met, it is in the best interest of the public to provide states applying for section 1332 waivers with the option to request to modify public notice procedures during an emergent situation. Based on the Departments' experience with the current COVID-19 PHE, the Departments are of the view that it is appropriate and reasonable to propose to make similar flexibilities available in future emergent situations.

The Departments are therefore proposing to modify 31 CFR 33.118(a) and 45 CFR 155.1318(a) to provide that the Secretaries may modify, in part, the state public notice requirements specified in 31 CFR 33.112(a)(1), (b), (c), and (d) and 45 CFR 155.1312(a)(1), (b), (c), and (d) and the federal public notice requirements specified at 31 CFR 33.116(b) and 45 CFR 155.1316(b) to expedite a decision on a proposed section 1332 waiver request during an emergent situation, when a delay would undermine or compromise the purpose of the proposed waiver request and would be contrary to the interests of consumers. The proposed amendments to 31 CFR 33.118(a) and 45 CFR 155.1318(a) further specify that these flexibilities would be limited to emergent situations, including natural disasters; PHEs; or other emergent situations that threaten consumers'

access to health insurance coverage, consumers' access to health care, or human life.

As noted earlier in this section of the preamble, the existing flexibility made available in the November 2020 IFC<sup>136</sup> for the COVID-19 PHE will continue to apply. The Departments also clarify that, similar to the November 2020 IFC, this rule does *not* propose to allow states to waive 31 CFR 33.112(a)(2) and 45 CFR 155.1312(a)(2), which requires states to conduct a separate process for meaningful consultation with federally-recognized tribes. The Departments note that tribal consultation is subject to separate requirements in accordance with Executive Order 13175,<sup>137</sup> which mandates the establishment of regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications.

In addition, the Departments clarify that a state cannot use this flexibility to request to eliminate public notice and participation procedures. Instead, this is a targeted proposal intended to extend the existing COVID-19 PHE flexibilities to future emergent situations to remove potential barriers and allow both the federal government and states flexibility to respond to emergent situations as they unfold. It is limited to permitting states to request to modify, in part, certain otherwise applicable public notice and participation requirements.

Examples of the public notice and participation procedures that currently apply that, under this proposal, a state may seek to have waived or modified during a future emergent situation include the requirement that states notify the public and hold hearings prior to submitting an application, that the state hold more than one public hearing in more than one location, and that the Departments provide for public notice and comment after an application is determined to be complete. States may also seek to modify the state and/or federal comment periods to be less than 30 days and to host public hearings virtually rather than in-person.

In addition, the Departments are of the view that these flexibilities are necessary to allow states flexibility to respond to rapid changes in the event of a future emergent situation and note that these proposals align with existing flexibilities available for public health programs that do not apply to section 1332 waivers. For example, when the

President declares a disaster or emergency under the Stafford Act or the National Emergencies Act and the Secretary of HHS declares a PHE under section 319 of the Public Health Service Act, section 1135 of the Act allows the Secretary of HHS to temporarily waive or modify certain Medicare, Medicaid, and CHIP requirements to ensure: (1) Sufficient health care items and services are available to meet the needs of individuals enrolled in these programs in the emergency area(s) and time periods; and (2) providers who give such services in good faith can be reimbursed and exempted from sanctions (absent any determination of fraud and abuse). However, section 1135 of the Act does not apply to or otherwise provide the Departments with authority to waive or modify requirements regarding section 1332 waivers when similar events cause similar impacts in the private health insurance markets. The proposed modifications to the Departments' section 1332 waiver regulations outlined in this rule are designed to generally align with the section 1135 flexibilities, but would be available in broader circumstances than emergencies or disasters declared under the Stafford Act or the National Emergencies Act and public health emergencies declared under section 319 of the Public Health Service Act. The Departments are proposing to apply this flexibility to include other emergencies at the state or local level to allow states to better address all of the various emergent situations that may impact their state health insurance markets and residents access to coverage and care.

Consistent with the existing framework for state modification requests related to the COVID-19 PHE, for a state request to modify the state or federal public notice requirements to expedite a decision on a proposed section 1332 waiver request during an emergent situation to be approved, the state must meet the requirements outlined in 31 CFR 33.118(b) and 45 CFR 155.1318(b). Under this proposal, the Secretaries could approve a state's request to modify the federal and/or state public notice procedures, in part, in future emergent situations if the state meets all of the following requirements:

- The state requests a modification in the form and manner specified by the Secretaries.
- The state acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for the modification for the section 1332 waiver, and the waiver application request, as applicable.

- The state details in its request for a modification, as applicable, the justification for the requested modification from the state public notice procedures, and the alternative public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification.

- The state details in its request for a modification, as applicable, the justification for the request and the alternative public notice procedures it requests to be implemented at the federal level.

The Departments also propose that the state, as applicable, implements the alternative public notice procedures at the state level if the state's modification request is approved and, if required, amends the section 1332 waiver application to specify that it is the state's intent to comply with those alternative public notice procedures in the state's modification request. These are the same requirements that apply under the existing framework for state modification requests related to the COVID-19 PHE and are currently captured in 31 CFR 33.118(b)(1) through (4) and (f) and 45 CFR 155.1318(b)(1) through (4) and (f).<sup>138</sup>

Any state submitting a proposed section 1332 waiver application during a future emergent situation could submit a separate request to the Secretaries to modify, in part, certain otherwise applicable state and/or federal public notice and public participation requirements or could include such a request in its section 1332 waiver application request.

Consistent with the framework for COVID-19 PHE state modification requests, the Secretaries' review and consideration of a modification request for future emergent situations would vary based on the state's circumstances, its modification request, and the complexity and breadth of the state's proposed section 1332 waiver request. For example, during the COVID-19 PHE, many states prohibited in-person public gatherings or established stay-at-home orders due to the public health

<sup>136</sup> See 85 FR 71142, <https://www.federalregister.gov/documents/2020/11/06/2020-24332/additional-policy-and-regulatory-revisions-in-response-to-the-covid-19-public-health-emergency>.

<sup>137</sup> See 85 FR 71142, 71178.

<sup>138</sup> To effectuate the extension of these flexibilities to future emergent situations, the Departments propose to amend 31 CFR 33.118(b)(3) and 45 CFR 155.1318(b)(3) to replace the current reference to "public health emergency" with "the emergent situation." This criterion otherwise remains the same.

threat.<sup>139</sup> States seeking new section 1332 waiver(s) that had such prohibitions in effect at the time they would have otherwise had to conduct public notice were unable to hold two in-person public hearings prior to submission of their section 1332 waiver applications. In similar future emergent situations, this approach would allow the Secretaries to grant the state's request to hold the two public hearings virtually, rather than in-person, or to hold one public hearing at the state level, rather than two public hearings at the state level, if the state's request meets other applicable requirements. As another example, the Secretaries may agree with a state's determination that, due to emergent circumstances that have arisen related to a natural disaster, there is insufficient time for the state to provide public notice and hold any public hearings at the state level prior to submitting its section 1332 waiver application as would otherwise be required by 31 CFR 33.112(a) and 45 CFR 155.1312(a), and grant the state's request to provide public notice and hold public hearings at the state level after the state's submission of its application if the state's request meets other applicable requirements.

In situations where the Departments approve a state's modification request to provide public notice and host the state-level hearings on a different timeframe or setting, such as after the submission of a state's waiver application request, the state would be required to amend the application request as necessary to reflect public comments or other relevant feedback received during the alternative state-level public notice procedures. The Departments would evaluate a state's request for a modification of the public participation requirements and issue their modification determination within approximately 15 calendar days after the request is received. In assessing whether a state acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the modification request for the waiver, and for the section 1332 waiver application, the Departments would evaluate whether the relevant circumstances are sufficiently emergent. The Departments propose in new proposed 31 CFR 33.118(g) and 45 CFR 155.1318(g) that the Departments will consider circumstances to be emergent when they could not have been reasonably

foreseen. In addition, the Departments propose to assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and would not make this assessment based solely on the number of days a state may have been aware of such issues. Other relevant factors that the Departments would consider include the specific circumstances involved, the nature and extent of the future emergent situation, and whether the state could have predicted the situation. To assist the Departments with making this assessment the Departments also propose to capture a new requirement at 31 CFR 33.118(b)(5) and 45 CFR 155.1318(b)(5) to require a state submitting a modification request must also explain in its request how the circumstances underlying its request result from a natural disaster; PHE; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life could not be reasonably have been foreseen and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers.

The Departments remind states that any public participation processes must continue to comply with applicable federal civil rights laws,<sup>140</sup> including taking reasonable steps to provide meaningful access for individuals with limited English proficiency and taking appropriate steps to ensure effective communication with individuals with disabilities, including accessibility of information and communication technology. It is also important for states to remember that virtual meetings may present additional accessibility challenges for people with communications and mobility disabilities, as well as to those who lack broadband access. The Departments expect states to take these considerations into account when seeking flexibility to modify the public participation requirements as the overall statutory and regulatory obligation to ensure a meaningful level of public

<sup>140</sup> The HHS Office for Civil Rights enforces applicable federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, age, or disability, as well as laws protecting the exercise of conscience and religious freedom, including the Religious Freedom Restoration Act (42 U.S.C. 2000bb through 2000bb-4). HHS's requirements are subject to these laws, and states may have obligations under these laws to protect conscience, prohibit coercion, and to ensure the free exercise of religion. U.S. Department of Health & Human Services, Office for Civil Rights, Conscience and Religious Freedom, <https://www.hhs.gov/conscience/index.html> (last visited Aug. 20, 2020).

input during the public notice and comment period would continue to apply. By way of example, ensuring effective communication during a future emergent situation when the otherwise applicable public notice and participation requirements are modified may include providing American Sign Language interpretation and real-time captioning as part of a virtual hearing, and ensuring that the platform used to host the hearing is interoperable with assistive technology for those with mobility difficulties. The Departments especially encourage states to strive to obtain meaningful input from potentially affected populations, including low-income residents, residents with high expected health care costs, persons less likely to have access to care, and members of federally-recognized tribes, if applicable, as part of any alternative public participation process.

Consistent with the framework for COVID-19 PHE state modification requests, the Secretary of HHS would publish on the CMS website any modification determinations within 15 calendar days of the Secretaries making such a determination, as well as the approved revised timeline for public comment at the state and federal level, as applicable.<sup>141</sup> In addition, the state would be required to publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment at the state and Federal level, as applicable.<sup>142</sup>

The Departments seek comment on these proposals.

#### b. Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)

As section 1332 waivers are likely to have a significant impact on individuals, states, and the federal government, the 2012 Final Rule established processes and methodologies to ensure that the Secretaries receive adequate and appropriate information regarding section 1332 waivers (consistent with section 1332(a)(4)(B)(iv) of the ACA). As part of the Departments' monitoring and oversight of approved section 1332 waivers, the Secretaries monitor the state's compliance with the specific terms and conditions of the waiver, including, but not limited to, compliance with the guardrails, reporting requirements, and the post

<sup>141</sup> See 31 CFR 33.118(d) and 45 CFR 155.1318(d).

<sup>142</sup> See 31 CFR 33.118(e) and 45 CFR 155.1318(e).

<sup>139</sup> <https://khn.org/morning-breakout/states-declare-emergencies-ban-large-gatherings-as-coronavirus-sweeps-the-nation/>. <https://www.axios.com/states-shelter-in-place-coronavirus-66e9987a-a674-42bc-8d3f-070a1c0ee1a9.html>.

award forum requirements.<sup>143</sup> Under 31 CFR 33.120(c) and 45 CFR 155.1320(c), to ensure continued public input within at least six months after the implementation date, and annually thereafter, states are required to hold a public forum at which members of the public have an opportunity to provide comments on the progress of the program authorized by the section 1332 waiver and to provide a summary of this forum to the Secretary of HHS for the Departments' review as part of the quarterly and annual reports required under 31 CFR 33.124 and 45 CFR 155.1324. Under 31 CFR 33.120(c)(1) and 45 CFR 155.1320(c)(1), states are required to publish the date, time, and location of the public forum in a prominent location on the state's public website at least 30 days prior to the date of the planned public forum. In the November 2020 IFC, the Departments added 31 CFR 33.120(c)(2) and 45 CFR 155.1320(c)(2) to provide that the Secretaries may waive, in part, post award public notice requirements during the COVID-19 PHE when certain criteria were met.

In this rulemaking, the Departments propose to modify 31 CFR 33.120(c)(2) and 45 CFR 155.1320(c)(2), to extend the flexibilities currently provided during the COVID-19 PHE to permit the Secretaries to modify in part, certain post award public notice requirements in 31 CFR 33.120(c) and 45 CFR 155.1320(c) for approved waivers during a future emergent situation when the application of the post award public notice procedures would be contrary to the interests of consumers. Extending these flexibilities beyond the COVID-19 PHE to future emergent situations is important to help states as they may face similar uncertainty as to whether they are able to comply with the otherwise applicable post award requirements in such situations. For example, the state post award procedures generally require an in-person gathering. Based on the Departments' experience with the current COVID-19 PHE, the Departments are of the view that it is appropriate and reasonable to propose to make similar flexibilities available in future emergent situations as those circumstances may also limit the ability for the state to host in-person gatherings. The Departments are not proposing any changes or soliciting further comments at this time with respect to the flexibility made available in the November 2020 IFC in response to the COVID-19 PHE. States with

approved section 1332 waivers will continue to have flexibility to submit requests to the Departments to modify certain post award public notice requirements during the COVID-19 PHE.<sup>144</sup>

Consistent with the framework for state modification requests related to the COVID-19 PHE, under this proposal, the Secretaries could similarly approve a state request to modify the post award public notice procedures, in part, when the application of the post award public notice requirements would be contrary to the interest of consumers during the future emergent situation. The Departments propose to amend the title in 31 CFR 33.120(c)(2) and 45 CFR 155.1320(c)(2) and to amend the text at 31 CFR 33.120(c)(2)(i) and 45 CFR 155.1320(c)(2)(i) to replace the references to "the public health emergency" with "an emergent situation." Amendments are also proposed to the last sentence of 31 CFR 33.120(c)(2)(i) and 45 CFR 155.1320(c)(2)(i) to replace the language that limits these flexibilities to the COVID-19 PHE to reflect the broader proposed applicability to emergent situations, including natural disasters; PHEs; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life. In addition, the Departments propose that the Secretaries could approve a state's post award modification request if the state meets all of the following requirements:

- The state requests a modification in the form and manner specified by the Secretaries.
- The state acts in good faith, and in a diligent, timely, and prudent manner to comply with the monitoring and compliance requirements under the regulations and specific terms and conditions of the section 1332 waiver and to submit and prepare the request for a modification.
- The state details in its request for a modification the reason(s) for the alternative post award public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergent circumstances underlying the state's request for a modification.

These are the same requirements that apply under the existing framework for state post award modification requests related to the COVID-19 PHE currently captured in 31 CFR 33.120(c)(2)(ii)(A)

through (C) and 45 CFR 155.1320(c)(2)(ii)(A) through (C).

Under this proposal, a state may request to modify the otherwise applicable public participation requirements to host the public forum for an approved section 1332 waiver that would take place or become due during an emergent situation virtually rather than as an in person gathering. When reviewing state modification requests, the Departments would remain focused on ensuring the public is informed about the implementation of programs authorized by section 1332 waivers and has a meaningful opportunity to comment on its implementation.

Consistent with the framework for COVID-19 state modification requests, the Secretaries would evaluate a state's request for a modification of certain post award public participation requirements during a future emergent situation and issue their modification determination within approximately 15 calendar days after the request is received.<sup>145</sup> The state would be required to publish on its website any modification requests and determinations by the Departments within 15 calendar days of receipt of the determination, as well as information on the approved revised timeline for the state's post award public notice procedures, as applicable.<sup>146</sup> Since the state is already required to post materials as part of post award annual reporting requirements, such as the notice for the public forum and annual report, states would be responsible for ensuring that the public is aware of the determination to modify the public notice procedures and would be required to include this information along with the other information required under 31 CFR 33.120(c)(1) and 45 CFR 155.1320(c)(1) for the alternative procedures in a prominent location on the state's public website.

The Departments are of the view that post award public forums are critical to ensure that the public has a regular opportunity to learn about and comment on the progress of section 1332 waivers. Based on the Departments' experience during COVID-19 PHE, the Departments believe it is appropriate and reasonable to propose to provide similar flexibilities and permit states to request to modify certain post award public participation requirements in future emergent situations. States that receive approval to modify, in part, these post award public notice procedures would

<sup>143</sup> See section 1332(a)(4)(iv) and (v). Also see 31 CFR 33.120 and 45 CFR 155.1320.

<sup>144</sup> See 85 FR 71142.

<sup>145</sup> See 31 CFR 33.120(c)(2)(ii)(D) and 45 CFR 155.1320(c)(2)(ii)(D).

<sup>146</sup> See 31 CFR 33.120(c)(2)(ii)(E) and 45 CFR 155.1320(c)(2)(ii)(E).

still need to meet all other applicable requirements specified in 31 CFR 33.120(c) and 45 CFR 155.1320(c). For example, if the state receives a modification approval that permits it to hold the post award public forum virtually instead of in person, the state must still publish the notice of its post award public notice on the state's public website and use other effective means to communicate the required information to the public. The public notice must include the website, date, and time of the public forum that will be convened by the state, information related to the timeframe for comments, and how comments from the public on the section 1332 waiver must be submitted. The Departments remind states that they still must also comply with applicable federal civil rights requirements, including laws pertaining to accessibility, if the Secretaries approve a modification from post award public notice procedures. For example, a state that receives approval to host the required public hearing(s) virtually would need to ensure the hearings are accessible to individuals with disabilities and individuals with limited English proficiency (LEP) so members of the public can participate and submit comments. The state should also track how many people are attending these forums, if possible.

In assessing whether a state acted in good faith, and in a diligent, timely, and prudent manner when reviewing a state's post award modification request, the Departments would evaluate whether the relevant circumstances are sufficiently emergent. The Departments propose in 31 CFR 33.120(c)(2)(iii) and 45 CFR 155.1320(c)(2)(iii) that the Departments will consider circumstances to be emergent when they could not have been reasonably foreseen. In addition, the Departments propose that to assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and would not make this assessment based solely on the number of days a state may have been aware of such issues. Other relevant factors that the Departments would consider include the specific circumstances involved, the nature and extent of the emergent situation, and whether the state could have predicted the situation. To assist the Departments with making this assessment the Departments also propose to capture a new requirement at 31 CFR 33.120(c)(2)(ii)(F) and 45 CFR 155.1320(c)(2)(ii)(F) to require a state submitting a post award modification request must also explain in its request

how the circumstances underlying its request result from a natural disaster; PHE; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life and could not be reasonably have been foreseen and how application of the post award public notice requirements would be contrary to the interests of consumers.

The Departments seek comment on this proposal.

#### 7. Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)

The Departments are proposing to modify 31 CFR 33.120(a)(1) and (2) and 45 CFR 155.1320(a)(1) and (2) to remove the reference, as codified under part 1 of the 2022 Payment Notice final rule, to interpretive guidance published by the Departments. This proposal is in line with the Departments efforts to provide supplementary information about the requirements that must be met for the continued oversight and monitoring of an approved section 1332 waiver. Because the Departments are of the view that the 2018 Guidance and the incorporation of its guardrail interpretations into regulations could result in the Departments approving section 1332 waivers that would result in fewer residents in those states enrolling in comprehensive and affordable coverage, that those interpretations do not represent the best fulfillment of congressional intent behind the statutory guardrails, that they are inconsistent with the policy intentions of E.O. 14009 and E.O. 13985, and that it is appropriate to address concerns raised by commenters on the 2018 Guidance, the Departments propose to remove the reference to the 2018 Guidance. Under this proposal the Departments would rely upon the statute and regulations, as well as the Departments' interpretive policy statements as outlined in the applicable notice and comment rulemaking, in monitoring approved section 1332 waivers.

#### 8. Pass-Through Funding (31 CFR 33.122 and 45 CFR 155.1322)

Section 1332(a)(3) of the ACA directs the Secretaries to pay pass-through funding to the state for the purpose of implementing the state section 1332 waiver plan and outlines accompanying requirements for making the pass-through funding determination. In this proposed rule, the Departments propose new regulation text at 31 CFR 33.122 and 45 CFR 155.1322 to codify in regulation details regarding the Departments' determination of pass-through funding for approved section

1332 waivers. More specifically, the Departments are proposing to codify in regulation that, with respect to a State's approved section 1332 waiver, the amount of federal pass-through funding would equal the amount, determined annually by the Secretaries, of the PTC under section 36B of the Code, the small business tax credit (SBTC) under section 45R of the Code, or cost-sharing reductions under ACA part I of subtitle E (collectively referred to as federal financial assistance), that individuals and small employers in the state would otherwise be eligible for had the State not received approval for its section 1332 waiver. This would include any amount not paid due to an individual not qualifying for federal financial assistance or qualifying for a reduced level of such financial assistance. The pass-through amount would not be increased to account for any savings other than the reduction in federal financial assistance. The pass-through amount would be reduced by any net increase in federal spending or net decrease in federal revenue if necessary to ensure deficit neutrality. The pass-through estimates take into account experience in the relevant state and the experience of other states with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other states. This amount would be calculated annually by the Departments and could be updated by the Departments as necessary to reflect applicable changes in Federal or State law. The proposed regulations further state, consistent with the statute,<sup>147</sup> that any pass-through funding can only be used for purposes of implementing the state's approved section 1332 waiver plan.

Consistent with the Departments' existing regulations at 31 CFR 33.108(f)(4) and 45 CFR 155.1308(f)(4), state section 1332 waiver applications are required to provide analysis and supporting data to inform the Department's estimate of the pass-through funding amount and the waivers' predicted impact on the deficit neutrality guardrail. For states that do not utilize a FFE, this includes information about enrollment, premiums, and federal financial assistance in the state's Exchange by age, income, and type of policy, and other information as may be required by the Secretaries. Consistent with the Departments' existing regulations at 31 CFR 33.124 and 45 CFR 155.1324, states with approved section 1332 waivers must comply with state reporting requirements in accordance with the

<sup>147</sup> See section 1332(a)(3) of the ACA.



terms and conditions of the state's section 1332 waiver. If pass-through funding is being sought as part of the state's section 1332 waiver plan, states may also be required to submit data as outlined in the states terms and conditions for the Departments to calculate pass-through funding. The Departments are not proposing any changes to these waiver requirements.

In addition, these proposals do not change the existing requirements codified in 31 CFR 33.108(f)(3)(iii) and 45 CFR 155.1308(f)(3)(iii) for the state's section 1332 waiver application to include a description of the provisions for which the state seeks a section 1332 waiver and how the waiver is necessary to facilitate the state's waiver plan. Further, under this proposed rule, the Departments propose that, as part of the state's waiver plan if the state is seeking pass-through funding, the state waiver application should include an explanation of how, due to the structure of the section 1332 state plan and the statutory provisions waived, the state anticipates that individuals would no longer qualify for federal financial assistance or would qualify for reduced federal financial assistance, as a result of the section 1332 waiver.<sup>148</sup> In addition, the Departments propose the state would also need to explain in its application how the state intends to use that funding for the purposes of implementing its section 1332 state plan.

The Departments seek comment on these proposals including the proposed adoption of the new regulatory text on pass-through funding for approved section 1332 waivers.

#### 9. Periodic Evaluation Requirements (31 CFR 33.128 and 45 CFR 155.1328)

The Departments are proposing to modify 31 CFR 33.128(a) and 45 CFR 155.1328(a) to remove the reference, as codified under part 1 of the 2022 Payment Notice final rule, to interpretive guidance published by the Departments. This proposal is in line with the Departments efforts to provide supplementary information about the requirements that must be met for the periodic evaluation requirements of an approved section 1332 waiver. Because the Departments are of the view that the 2018 Guidance and the incorporation of its guardrail interpretations into regulations could result in the Departments approving section 1332 waivers that would result in fewer

<sup>148</sup> While this rule generally proposes to supersede and rescind the 2018 Guidance, the Departments are proposing these standards which align with the approach outlined in the 2018 Guidance.

residents in those states enrolling in comprehensive and affordable coverage, that those interpretations do not represent the best fulfillment of congressional intent behind the statutory guardrails, that they are inconsistent with the policy intentions of E.O. 14009 and E.O. 13985, and that it is appropriate to address concerns raised by commenters on the 2018 Guidance, the Departments propose to remove the reference to the 2018 Guidance. Under this proposal the Departments would rely upon the statute and regulations, as well as the Departments' interpretive policy statements as outlined in the applicable notice and comment rulemaking, in conducting periodic evaluations of approved section 1332 waivers.

#### 10. Waiver Amendment (31 CFR 33.130 and 45 CFR 155.1330)

The Departments are proposing new regulations at 31 CFR 33.130 and 45 CFR 155.1330 to delineate the process by which a state is permitted to submit an amendment to an approved section 1332 waiver. The proposed new regulations also capture a proposed definition of section 1332 waiver amendment. While the statute does not specifically mention amendment requests, some states with approved section 1332 waivers have indicated interest in amending their current approved waiver plans. Further, in response to previously received comments on the 2012 final rule, the Departments acknowledged that information regarding section 1332 waiver amendments and renewals would be needed in the future<sup>149</sup> and the Departments have received several inquiries from states on these topics. In addition, there may be situations where states pursuing proposed section 1332 waiver plans are interested in amending an application that has been submitted to the Departments for review. The Departments propose that the framework outlined in this rule would only apply to amendments to approved section 1332 waiver plans and would not apply to changes to an initial section 1332 waiver application submitted to the Departments but unapproved.<sup>150</sup> A state is not authorized to implement any aspect of the proposed amendment

<sup>149</sup> See 77 FR 11700, <https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

<sup>150</sup> In circumstances where a state wants to amend its waiver application before the Departments have approved the waiver plan, the Departments intend to work with the state to ensure there is an adequate, meaningful opportunity for public notice and comment taking into account the particular circumstances of the situation and the state's waiver application (such as the changes to the proposed waiver, timing, etc.).

without prior approval by the Departments.

In this rule, the Departments set forth a proposed procedural framework for submission and review of amendment requests for an approved section 1332 waiver. The Departments are of the view that this additional information will help states with approved section 1332 waiver plans better plan for and prepare for potential amendments to their state waiver plans. The Departments also intend to continue providing information and details regarding the section 1332 waiver amendment process in the specific terms and conditions for an approved waiver plan. The proposals outlined later in this section are intended to align with the current amendment request process outlined in recent specific terms and conditions (STCs) for states with approved waivers.<sup>151</sup>

#### a. Definition of Waiver Amendment

For purposes of these requirements, the Departments propose to define the term "section 1332 waiver amendment" as a change to a section 1332 waiver plan that is not otherwise allowable under the STCs of an approved waiver, a change that could impact any of the section 1332 statutory guardrails or a change to the program design for an approved waiver. Such potential changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing. The Departments propose to codify this definition in new proposed 31 CFR 33.130(a) and 45 CFR 155.1330(a).

#### b. Waiver Amendment Process

To request a waiver amendment, the Departments propose that the state must submit a letter in electronic format to the Departments to notify them in writing of its intent to request an amendment to its approved section 1332 waiver plan(s). The state would be required to include a detailed description of all of the intended change(s), including the proposed implementation date(s), in its letter of intent. The state is encouraged to submit the letter of intent at least 15 months prior to the section 1332 waiver amendment's proposed implementation date and to engage with the Departments early on in their development of a potential waiver amendment. The state may want to submit this letter of intent more than 15 months prior to the section 1332 waiver

<sup>151</sup> For example, see STC 9 in New Hampshire's Approval Letter and STCs: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-NH-Approval-STCs.pdf>.

amendment's proposed implementation date, depending on the complexity of the amendment request, the timeline for implementation, among other factors.

The Departments would review the state's letter of intent request. The Departments propose that, within approximately 30 days of the Departments' receipt of the letter of intent, the Departments would respond to the state and confirm whether the change requested is a section 1332 waiver amendment, as well as identify the information the state needs to submit in its waiver amendment request. This written response would also include whether or not the proposed section 1332 waiver amendment(s) would be subject to any additional or different requirements. For example, depending on the complexity of the section 1332 amendment request, scope of changes from the approved waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 CFR 33.108(f) and 45 CFR 155.1308(f) for initial section 1332 waiver applications. The preamble regarding section 1332 waiver amendment content that follows further describes the proposed content requirements for section 1332 waiver amendment requests.

Under the proposed section 1332 waiver amendment framework, the state should generally plan to submit its waiver amendment request no later than nine months prior to when the proposed amendment would take effect in order to allow for sufficient time for review of the waiver amendment request. Similar to the regulations at 31 CFR 33.108(a) and 45 CFR 155.1308(a) for new section 1332 waiver applications, the Departments propose that applications for waiver amendments of a section 1332 waiver must be submitted in electronic format to the Departments. Similar to the regulations at 31 CFR 33.108(b) and 45 CFR 155.1308(b) for new section 1332 waiver applications, the Departments propose that the state is required to submit the section 1332 waiver amendment request sufficiently in advance of the requested waiver implementation date, particularly when the waiver plan impacts premium rates, to allow for an appropriate review and implementation timeframe. Depending on the complexity of the section 1332 amendment request, the state may want to submit the amendment application earlier than nine months prior to implementation. In developing the implementation timeframe for its section 1332 waiver amendment request, the Departments propose that

the state must maintain uninterrupted operations of the Exchange in the state and provide adequate notice to affected stakeholders and issuers of health insurance plans that would be (or may be) affected by the amendment to take necessary action based on approval of the section 1332 waiver amendment request. As detailed later in this section of this preamble, these are operational details that the state would be required to address as part of its waiver amendment request. In addition, as reflected in the new proposed regulations at 31 CFR 33.130(a) and 45 CFR 155.1330(a), a state would not be authorized to implement any aspect of the proposed amendment without prior approval from the Secretaries.

In this rule, the Departments are proposing a similar process for section 1332 waiver amendment requests as is outlined for new section 1332 waiver applications in 31 CFR 33.108 and 45 CFR 155.1308. In line with these requirements, the Departments are proposing to define the type of information and what information a state is required to provide to the public prior to the submission of a section 1332 waiver amendment request to the Departments. Similar to new section 1332 waiver applications, the Departments propose to evaluate the state's section 1332 waiver amendment request and may approve the request if the waiver, as amended, meets the statutory guardrails as defined in Section 1332(b)(1)(A)–(D) and other applicable requirements. In general, states are permitted to have a waiver plan that consists of different components or parts. Under this proposal, states would be permitted to propose an amendment, which could build on an approved section 1332 waiver plan. The Departments are proposing that a state's approved section 1332 waiver plan and the proposed waiver amendment request should be analyzed together, and the state would receive pass-through funding for implementation of the amended waiver plan (including the amendment, if approved) if the amended waiver plan yields federal financial assistance savings, net of any reductions necessary to ensure deficit neutrality. For example, if a state has an approved reinsurance program for plan year 2021 through 2025, and is seeking approval for a waiver amendment request to begin in 2023, the analysis in the section 1332 waiver amendment request should demonstrate that the reinsurance program combined with any proposed amendments meets the guardrails. In comparing scenarios with

and without the section 1332 waiver, the Departments propose to consider the without-waiver scenario to include neither the reinsurance program nor the section 1332 waiver amendment request and the with-waiver scenario to include the combined impact of the reinsurance program and the section 1332 waiver amendment request. In terms of pass-through funding, the Departments propose that, if the section 1332 waiver amendment request described in the example above is approved and determined to yield additional reductions in federal financial assistance (in the form of PTC, CSR, or SBTC), the state would continue to receive pass-through funding annually for combined reductions in federal financial assistance for the entire section 1332 waiver plan, rather than receiving a separate pass through funding amount for the reinsurance component of the waiver and a separate pass-through funding amount for the waiver amendment component. As noted in the above preamble on pass-through funding, such amounts could be updated by the Departments, as necessary, to reflect applicable changes in state or federal law.

Similar to the requirements in 31 CFR 33.108 and 45 CFR 155.1308, the Departments also propose that the public must have a meaningful opportunity to provide input at the state and federal level on waiver amendment requests. Section 1332(a)(4)(B) of the ACA requires the Secretaries to issue regulations that provide a process for public notice and comment at the State level, including public hearings, that is sufficient to ensure a meaningful level of public input. The Departments propose that a state pursuing a section 1332 waiver amendment must conduct the state public notice process that is specified for new applications at 31 CFR 33.112 and 45 CFR 155.1312. As such, to ensure a meaningful level of public input the comment period would generally need to be no less than 30 days. The Departments also propose that it would be permissible for a state to use its annual public forum required under 31 CFR 33.120(c) and 45 CFR 155.1320(c) for the dual purpose of soliciting public input on a proposed section 1332 waiver amendment request and on the progress of its approved waiver plan. This policy proposal is in line with the flexibility the Departments permitted in the 2012 Final Rule section 1332 regulations<sup>152</sup> to allow for states to use Medicaid tribal consultation to also satisfy the requirements as set forth in 31 CFR 33.112(a)(2) and 45 CFR

<sup>152</sup> See 77 FR at 11706.

155.1312(a)(2), that require a State with one or more Federally-recognized tribes within its borders to conduct a separate process for meaningful consultation with the tribes as part of the State section 1332 waiver public notice and comment process. The Departments are of the view that allowing states to use the annual public forum for the dual purpose of soliciting public input on the state's proposed section 1332 waiver amendment request and on the progress of its approved waiver plan would create a more efficient process for both the state and the public to provide a meaningful level of input. Furthermore, this proposal would allow a state to explain to the public how the state's proposed section 1332 waiver amendment would interact with the state's approved waiver plan, and thus would be beneficial to the public in understanding the impact of the state's proposed waiver amendment.

In this rule, the Departments are proposing a similar federal public notice and approval process for section 1332 waiver amendment requests as is outlined for new section 1332 waiver applications in 31 CFR 33.116 and 45 CFR 155.1316. In line with these requirements, the Departments propose that following a determination that a state's section 1332 waiver application request for a section 1332 waiver is complete, the Secretaries will provide for a public notice and comment period that is sufficient to ensure a meaningful level of public input and the comment period would generally be no less than 30 days. The Departments would make available through an HHS website the complete section 1332 waiver amendment request, information relating to how and where written comments may be submitted, and the timeframe during which comments will be accepted. Additionally, the Departments will make available public comments received on the section 1332 waiver amendment request during the Federal public notice and comment period. The Departments are of the view that these proposals would increase transparency of the federal review process and create a clear path for states and the Departments to determine if the information submitted is sufficient to continue review and when to start a federal public comment period on the state's proposed waiver amendment. In addition, the Departments are of the view that these proposals provide the public with a meaningful opportunity to provide input on a section 1332 waiver request in line with the intent of the statute.

#### c. Waiver Amendment Content

The Departments propose that a state that wants to pursue a section 1332 waiver amendment request must furnish information and analysis regarding the state's proposed waiver amendment that is necessary to permit the Departments to evaluate the request. The proposed information and analysis is similar to the existing requirements for new section 1332 waiver applications.<sup>153</sup> As such, the Departments propose that a section 1332 waiver amendment request must include the following:

- (1) A detailed description of the requested amendment, including the impact on the guardrails, and related changes to the section 1332 waiver program elements as applicable, including sufficient supporting documentation;
- (2) An explanation and evidence of the process used by the state to ensure meaningful public input;
- (3) Evidence of sufficient authority under state law(s) in order to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing the section 1332 waiver amendment;
- (4) An updated actuarial and/or economic analysis demonstrating how the section 1332 waiver, as amended, will meet the section 1332 statutory guardrails;
- (5) An explanation of the estimated impact, if any, of the section 1332 waiver amendment on pass-through funding; and
- (6) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the section 1332 waiver amendment.

For the required updated actuarial and/or economic analysis, the Departments propose that such analysis must identify the "with waiver" impact of the requested amendment on the statutory guardrails. Such analysis would also be required to include a "with waiver" and "without waiver" status on both a summary and detailed level through the current approval period using data from recent experience, as well as a summary of and detailed projections of the change in the "with waiver" scenario. In addition, as described above, the Departments propose that the analysis submitted by the state with its section 1332 waiver amendment request must demonstrate how the state's approved section 1332 waiver plan, combined with any proposed amendments, impacts the guardrails.

The Departments solicit comments on these proposals, including whether the

proposed framework for section 1332 waiver amendment requests should be codified in regulation.

#### 11. Waiver Extension (31 CFR 33.132 and 45 CFR 155.1332)

Section 1332(e) of the ACA provides that no section 1332 waiver may extend over a period of longer than 5 years unless the state requests continuation of its waiver, and such request shall be deemed granted unless the Departments, within 90 days after the date of its submission, either deny such request in writing or inform the state in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. Recognizing that several of the existing section 1332 waivers were approved in 2016 and 2017 to begin in plan years 2017 and 2018, respectively, the Departments are proposing new regulations at 31 CFR 33.132 and 45 CFR 155.1332 to codify section 1332(e) of the ACA and are also proposing, in preamble, the proposed framework for section 1332 waiver extensions. Further, in response to previously received comments, the Departments acknowledged that information regarding section 1332 waiver amendments and renewals would be needed in the future<sup>154</sup> and the Departments have received several inquiries from states on these topics. As such, in this proposed rule the Departments are proposing new regulations at 31 CFR 33.132 and 45 CFR 155.1332 to permit, but not require, states to submit a section 1332 waiver extension request to continue an approved waiver plan. These proposed new regulations also provide that an extension request shall be deemed granted unless the Secretaries, within 90 days after the date of the state's submission of a complete section 1332 waiver extension request, either deny such request in writing or inform the State in writing with respect to any additional information needed to make a final determination with respect to the request. This proposed rule also sets forth, in preamble, a proposed procedural framework for submission and review of extension requests for approved section 1332 waiver plans. The Departments are of the view that this additional information will help states with approved section 1332 waiver plans better plan for and prepare for potential extensions to their waiver plans. The Departments also intend to provide information and details regarding the section 1332 waiver

<sup>153</sup> See 31 CFR 33.108 and 45 CFR 155.1308.

<sup>154</sup> See 77 FR 11700, <https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

extension process in the STCs for an approved waiver plan. These proposals are intended to align with the extension request process outlined in recent STCs for states with approved section 1332 waivers.<sup>155</sup>

The Departments propose to define a section 1332 waiver extension as an extension of an approved waiver under the existing waiver terms. As detailed further later in this section of this preamble, if a state wants to make changes to the existing terms of an approved section 1332 waiver, the proposed waiver amendment request framework outlined in this rulemaking would apply. The Departments propose that states with approved section 1332 waivers that want to pursue a waiver extension would be required to inform the Departments if the state will apply for extension of its waiver at least one year prior to the waiver's end date. To request a section 1332 waiver extension, the Departments propose that the state must submit a letter of intent in an electronic format to the Departments to notify them in writing of its intent to request a waiver extension of its approved waiver plan(s). The Departments would then review the state's letter of intent request. The Departments propose that, within approximately 30 days of the Departments' receipt of the letter of intent, the Departments will respond to the state and confirm whether the extension request will be considered as an extension request or whether any changes requested result in the need for a waiver amendment request instead. The Departments will also identify the information the state needs to submit in its section 1332 waiver extension request. The Departments also propose that section 1332 waiver extension requests must also be submitted in electronic format to the Departments, consistent with the format and manner requirements applicable to initial waiver applications under 31 CFR 33.108(a) and 45 CFR 155.1308(a).

Furthermore, the Departments propose that the Departments may request an updated economic or actuarial analysis for the requested extension period in a section 1332 waiver extension request. Given that the Departments receive periodic reports from states with approved section 1332 waivers under 31 CFR 33.124 and 45 CFR 155.1324, in some circumstances the Departments may not need and therefore would not require full new

analysis (as required under 31 CFR 33.108(f)(4) and 45 CFR 155.1308(f)(4) for initial section 1332 waiver applications) and instead may rely on the updated analyses provided as part of these periodic reports. In other instances, depending on the complexity of the section 1332 waiver and the extension request, the Departments may require additional data and information to be submitted to review the extension request.

The Departments propose to evaluate the state's section 1332 waiver extension request and may approve the request if it meets the statutory guardrails as defined in section 1332 (b)(1)(A)–(D) and meets other applicable requirements. The Departments propose that a state waiver extension request may be required to include the following information:

(1) Updated economic or actuarial analyses for the requested extension period in a format and manner specified by the Departments;

(2) Preliminary evaluation data and analysis from the existing section 1332 waiver program;

(3) Evidence of sufficient authority under state law(s) in order to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested extension;

(4) An explanation of the process followed by the state to ensure meaningful public input on the extension request at the state-level; and,

(5) Other information as requested by the Departments that is necessary to reach a decision on the requested extension.

As noted above, the Departments would identify the specific information a state needs to include as part of its section 1332 waiver extension request in the response to the state's letter of intent. Further, the Departments have proposed a requirement that the updated economic or actuarial analyses for the requested extension period would be in a format and manner specified by the Departments. The Departments will also rely on available data, such as the analyses provided as part of the periodic reports required under 31 CFR 33.124 and 45 CFR 155.1324, when evaluating a state's waiver extension request if appropriate.

The Departments also propose that it would be permissible for a state to use its annual public forum required under 31 CFR 33.120(c) and 45 CFR 155.1320(c) for the dual purpose of soliciting public input on a proposed section 1332 waiver extension request and on the progress of its approved waiver plan. This policy proposal is in line with the flexibility the Departments

permitted in the 2012 section 1332 regulations<sup>156</sup> to allow states to use Medicaid tribal consultation to also satisfy the requirements as set forth in 31 CFR 33.112(a)(2) and 45 CFR 155.1312(a)(2), that require a state with one or more federally-recognized tribes within its borders to conduct a separate process for meaningful consultation with such tribes as part of the state section 1332 waiver public notice and comment process. The Departments are of the view that allowing states to use the annual public forum for the dual purpose of soliciting public input on an extension request and on the progress of its approved section 1332 waiver would create a more efficient process for both the state and for the public to provide a meaningful level of input.

In this rule, the Departments are proposing a similar federal public notice and review process for a section 1332 waiver extension request as is outlined for new section 1332 waiver applications in 31 CFR 33.116 and 45 CFR 155.1316. The Departments propose that the Departments will review a state's section 1332 waiver extension request and make a preliminary determination as to whether it is complete within approximately 30 days after it is submitted. In line with these requirements, the Departments propose that after determining that the section 1332 waiver extension request is complete, the waiver extension request would be made public through the CMS website, and a 30-day federal public comment period would commence while the extension request is under review. The Departments will make available through the CMS website the information relating to how and where written comments may be submitted and the timeframe during which comments will be accepted.

Additionally, the Departments will make available public comments received on the section 1332 waiver amendment request during the Federal public notice and comment period. The determination that the section 1332 waiver extension request is complete would also mark the beginning of the 90-day clock outlined in section 1332(e) of the ACA for the Secretaries to deny or request more information regarding the continuation, or extension, of the state's approved waiver plan. If, after the extension request has been determined complete, the Departments find that content is missing, additional information is required, or the state needs to respond to public comments received during the federal comment period, the Departments would notify

<sup>155</sup> For example, see STC 10 in New Hampshire's Approval Letter and STCs: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-NH-Approval-STCs.pdf>.

<sup>156</sup> See 77 FR at 11706.

the state and an additional review period would begin once the Departments have received the requested information from the state. The Departments propose that this additional review period would be no longer than 90 days. The Departments are of the view that these proposals increase transparency of the federal review process and creates a clear path for states and the Departments to determine if the information submitted is sufficient to continue review and when to start a federal public comment period. In addition, the Departments are of the view that this proposal provides the public with a meaningful opportunity to provide input on a section 1332 waiver extension request in line with the intent of the statute.

The proposed section 1332 waiver extension request process would be separate from the waiver amendment framework described earlier in this rulemaking. A section 1332 waiver extension request under proposed 31 CFR 33.132 and 45 CFR 155.1332 would only be available for an extension of the existing terms of an approved waiver plans and would not be applicable if the state was seeking to make substantive changes to its approved waiver plan beyond a continuation of the term of the waiver. If a state also seeks to make substantive changes to its approved section 1332 waiver plan along with seeking an extension, the Departments would treat those changes as amendments and the framework outlined in this preamble for waiver amendment requests would apply.

The Departments solicit comments on these proposals including whether the proposed framework for section 1332 waiver extension requests should be codified in regulation.

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.

- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

### A. ICRs Regarding Navigator Program Standards (§ 155.210)

The data collection requirements for FFE Navigator grantees are currently approved under OMB control 0938–1215/Expiration date: October 31, 2023 (Cooperative Agreement to Support Navigators in Federally-facilitated Exchanges). The proposal to once again require FFE Navigators to provide consumers with information and assistance with regard to certain post-enrollment topics does not increase the number of reports that Navigator grantees are required to submit. Additionally, we do not anticipate changes to the data elements related to the proposed expansion of required Navigator duties to be significant. We note that since the 2020 Payment Notice made assistance with the topics at § 155.210(e)(9) permissible, but no longer required, many Navigator grantees have continued to report on these activities as part of their weekly, monthly, and quarterly metric reports to HHS. Therefore, we do not project the information collection burden to increase.

### B. ICRs Regarding Segregation of Funds for Abortion Services (§ 156.280)

We are proposing an amendment to § 156.280(e)(2)(ii) to repeal the separate billing requirement governing payments for QHPs that offer coverage of abortion services for which federal funds are prohibited. Specifically, we are proposing to revert to and codify in amended regulatory text at § 156.280(e)(2)(ii) the prior policy in the 2016 Payment Notice such that QHP issuers offering coverage of abortion services for which federal funds are prohibited again have flexibility in selecting a method to comply with the separate payment requirement in section 1303 of the ACA. If finalized, acceptable methods for satisfying the separate payment requirement would include sending the policy holder a single monthly invoice or bill that separately itemizes the premium amount for coverage of abortion services for which federal funds are prohibited; sending the policy holder a separate monthly bill for these services; or sending the policy holder a notice at or soon after the time of enrollment that

the monthly invoice or bill will include a separate charge for such services and specify the charge. We believe these proposals will remove the burden associated with the separate billing regulation, as detailed below.

The 2019 Program Integrity Rule<sup>157</sup> estimated that the total one-time burden to implement the separate billing regulation for the 94 issuers that were offering coverage for abortion services for which federal funds are prohibited at the time of finalization would be 2,961,000 hours for a total cost of approximately \$385 million. We anticipated the one-time burden for the 3 State Exchanges that performed premium billing and payment processing and had QHP issuers that offered coverage for abortion services for which federal funds are prohibited to be 94,500 hours for a total cost of approximately \$12.3 million. In the May 2020 IFC,<sup>158</sup> we reaffirmed these one-time estimates and anticipated that this one-time burden would still be incurred primarily in 2020, despite the 60-day delay to the implementation deadline.

The 2019 Program Integrity Rule also estimated ongoing annual costs for implementing the separate billing regulation. We estimated the total annual burden in 2020 for all 94 issuers would be 1,133,640 hours with an equivalent cost of approximately \$50.1 million. From 2021 onwards, we estimated the total annual burden for all 94 issuers to be approximately 2,267,280 hours with an associated cost of approximately \$100.2 million. We estimated that for the 3 State Exchanges performing premium billing and payment processing, the total annual burden would be approximately 36,180 hours with an equivalent cost of approximately \$1.6 million in 2020 and 72,360 hours with an associated cost of approximately \$3.2 million starting in 2021. We predicted in the May 2020 IFC that delaying the implementation of the deadline for the separate billing regulation by 60 days would result in a reduction to this annual burden in 2020 of 389,940 hours with an equivalent cost reduction of approximately \$17.4 million for all 97 issuers and State Exchanges performing premium billing and payment processing.

In addition, the Program Integrity Rule estimated that issuers and State Exchanges performing premium billing and payment processing would need to print and send approximately 1.82 million separate paper bills per month in 2020, incurring monthly costs of approximately \$91,200. The Program

<sup>157</sup> 84 FR 71674 (December 27, 2019).

<sup>158</sup> 85 FR 27550 (May 8, 2020).

Integrity Rule estimated the total cost for all issuers and State Exchanges to be approximately \$547,225 in 2020. In 2021, we estimated that the annual cost for all issuers and State Exchanges to send separate paper bills would be approximately \$1,070,129 and that, in 2022, the annual cost would be approximately \$1,045,808. In the May 2020 IFC, we anticipated that delaying the implementation of the deadline for the separate billing regulation by 60 days would reduce the cost of printing separate bills in 2020 by approximately \$182,400.

We are not aware of any issuers or State Exchanges performing premium billing and payment processing that have incurred costs to implement these requirements. Therefore, if finalized, repealing the separate billing regulation would also remove the associated ICRs and the anticipated burden on QHP issuers and State Exchanges that perform premium billing and payment processing. Thus, if finalized as proposed, we will request discontinuation of the ICRs associated with the repealed separate billing regulation (OMB control number: 0938–1358 (Billing and Collection of the Separate Payment for Certain Abortion Services (CMS–10681)).

#### *C. ICRs Regarding Section 1332 Waivers (31 CFR Part 33 and 45 CFR Part 155)*

In this proposed rule, the Departments propose modifications to the section 1332 waiver implementing regulations, including changes related to the interpretation of the statutory guardrails, section 1332 waiver amendment and extension requests, and new language related to pass-through funding for approved section 1332 waiver plans. As outlined in this proposed rule, the policies and interpretations proposed in this rule, if finalized, would supersede and replace prior finalized policies and interpretations. The Departments also propose to modify regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for section 1332 waivers during emergent situations, building off of the flexibilities provided during the COVID–19 PHE. However, this rule does not propose to alter any of the requirements related to section 1332 waiver applications, compliance and monitoring, or evaluation in a way that would impose any additional costs or burdens for states seeking waiver approval or those states with approved waiver plans that have not already been captured in prior burden estimates. The Departments anticipate that

implementing these provisions would not significantly change the associated burden currently approved under OMB control number: 0938–1389/Expiration date: February 29, 2024.

#### *D. Submission of PRA-Related Comments*

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

We invite public comments on these potential ICRs. If you comment on these information collections, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received on/by July 28, 2021.

#### **VI. Response to Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

#### **VII. Regulatory Impact Analysis**

##### *A. Statement of Need*

This rule proposes revised FFE and SBE–FP user fees for the 2022 benefit year. It also proposes to repeal the Exchange DE option; and includes proposed changes related to open enrollment; Navigator program standards; and separate billing and segregation of funds for abortion services. In addition, it clarifies a provision related to special enrollment periods for enrollees that are newly eligible or ineligible for APTC. Finally, relating to section 1332 waivers, it proposes several changes, including the repeal of the incorporation of many policies and interpretations from the 2018 Guidance into the section 1332 waiver implementing regulations. These policies are consistent with providing more accessible and affordable health care through the individual and small group markets.

HHS is proposing to extend the annual individual market open enrollment period in order to provide individuals with a longer opportunity to enroll in coverage, which will expand access to health insurance coverage.

Similarly, HHS is proposing to reinstitute prior requirements that FFE Navigators provide information and assistance with regard to certain post-enrollment topics and help consumers understand basic concepts and rights related to health coverage and how to use it in order to make coverage more accessible to consumers. In addition, HHS is proposing to repeal the separate billing regulation at § 156.280(e)(2)(ii) that required individual market QHP issuers to send a separate bill for that portion of a policy holder's premium that is attributable to coverage for abortion services for which federal funds are prohibited and to instruct such policy holders to pay for the separate bill in a separate transaction. This proposal, if finalized, would reduce administrative burden on issuers, states, Exchanges, and consumers, as well as consumer confusion and unintended losses of coverage.

##### *B. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the

rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We estimate that this rulemaking is "economically significant" as measured by the \$100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

The provisions in this proposed rule aim to expand consumer access to affordable health care. They would extend the annual open enrollment period, expand Navigator duties, repeal the Exchange DE option, provide more

funding for FFE Navigators and consumer outreach and education, and reduce administrative burden and confusion for consumers. These provisions would also reduce regulatory burden for states and administrative costs for Exchanges and issuers. Through the improvements in enrollment accessibility and increased affordability for consumers, these proposed provisions are expected to increase access to affordable health coverage.

The proposed user fee rates in this proposed rule are higher than those previously finalized for 2022 in part 1 of the 2022 Payment Notice final rule,<sup>159</sup> which could increase premiums for consumers. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

<sup>159</sup> 85 FR 6138.

### *C. Impact Estimates of the Proposed Rule Provisions and Accounting Table*

In accordance with OMB Circular A-4, Table 1 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This proposed rule implements standards for programs that will have numerous effects, including allowing consumers to have continued access to coverage and health care and stabilizing premiums in the individual and small group health insurance markets and in the Exchanges. We are unable to quantify all benefits and costs of this proposed rule. The effects in Table 1 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for health insurance issuers and consumers.



**TABLE 1: Accounting Statement**

Benefits:				
Qualitative:				
<ul style="list-style-type: none"> <li>Consumers will benefit from a longer open enrollment period, as they will have a greater opportunity to enroll in coverage.</li> <li>The special enrollment period clarification will benefit any individual who experiences a decrease in household income that makes them newly eligible for an APTC amount of greater than zero dollars.</li> <li>Consumers will benefit from repeal of the separate billing regulation, as they will no longer be subject to confusing billing processes.</li> <li>APTC-eligible qualified individuals whose household income does not exceed 150 percent of the FPL will benefit from the new special enrollment period, as they will have more opportunities to enroll in coverage throughout the year.</li> </ul>				
Costs:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$/year)	-\$270.1 million	2020	7 percent	2021-2025
	-\$267.3 million	2020	3 percent	2021-2025
Quantitative:				
<ul style="list-style-type: none"> <li>Reduction in costs to all issuers, states, State Exchanges performing premium billing and payment processing, the FFE, and consumers due to the separate billing regulation of approximately \$407.05 million in 2021, \$230.7 million in 2022, and \$229.3 million annually in 2023 and onwards. In addition to annual costs, the reduction in costs in 2021 includes a reduction in cost to reflect the one-time implementation changes that issuers, states, States Exchanges performing premium billing and payment processing, and the FFEs would have incurred if the separate billing policy had been implemented in 2020. Because the separate billing policy was not implemented in 2020 due to courts invalidating the policy, these one-time costs could have been incurred in 2021, had the separate billing policy remained applicable.</li> </ul>				
Qualitative:				
<ul style="list-style-type: none"> <li>Increased costs due to increases in providing medical services (if health insurance enrollment increases).</li> <li></li> </ul>				
Transfers:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$/year)	\$480.9 million to \$1.2309 billion	2021	7 percent	2022-2026
	\$481.5 million to \$1.2315 billion	2021	3 percent	2022-2026
Quantitative:				
<ul style="list-style-type: none"> <li>Increase in transfers from the issuers to federal government by approximately \$200 million in 2022 and approximately \$240 million in 2023 onwards due to changes in user fee rates and state transitions from FFEs to SBE-FPs or from SBE-FPs to SBEs.</li> <li>A potential 0.5 to 2 percent increase in premiums in 2022 and onwards as a result of the monthly special enrollment period for APTC-eligible qualified individuals whose household income does not exceed 150 percent of the FPL, with a corresponding potential increase in APTC/PTC annual outlays and decrease in income tax revenues of approximately \$250 million to \$1 billion.</li> </ul>				

This RIA expands upon the impact analyses of previous rules and utilizes the CBO analysis of the ACA's impact on federal spending, revenue collection, and insurance enrollment. In addition to utilizing CBO projections, HHS conducted an internal analysis of the effects of its regulations on enrollment and premiums. Based on these internal analyses, we anticipate that the quantitative effects of the provisions proposed in this rule are consistent with our previous estimates in the 2021 Payment Notice for the impacts

associated with APTC and FFE user fee requirements.

1. Navigator Program Standards (§ 155.210)

We propose to amend § 155.210(e)(9) to reinstitute the requirement that FFE Navigators provide consumers with information and assistance with regard to certain post-enrollment topics. In FFEs, Navigators will continue to be permitted to undertake the Navigator duties specified in § 155.210(e)(9) until this proposal, if finalized, becomes effective. If this proposal is finalized,

FFE Navigators would be required to perform the Navigator duties specified in § 155.210(e)(9) beginning with Navigator grants awarded after the effective date of this rule, including non-competing continuation awards. If this proposal is finalized prior to Navigator grant funding being awarded in FY 2022, FY 2021 Navigator grantees will be required to perform these duties beginning with the Navigator grant funding awarded in FY 2022 for the second 12-month budget period of the 36-month period of performance. To the extent Navigators awarded grant

funding in FY 2021 are not already performing these duties under their year one project plans when this proposal, if finalized, becomes effective, they can revise their project plans to incorporate performance of the duties specified in § 155.210(e)(9) as part of their non-competing continuation application for their FY 2022 funding.

These duties were previously required of Navigators in all Exchanges before the 2020 Payment Notice amended § 155.210(e)(9) and made assistance with these post-enrollment topics permissible for FFE Navigators, but not required, beginning with FFE Navigator grants awarded in 2019. Despite no longer being required, the majority of FFE Navigators continue to provide information and assistance to consumers and report metrics on the post-enrollment topics outlined in § 155.210(e)(9) and we anticipate positive feedback from Navigators and other stakeholders in response to this proposal. Additionally, by reinstating the requirements at § 155.210(e)(9), we would be able to both require applicants to include plans for performing these post-enrollment activities as part of their annual applications for new or continued Navigator grant funding, as well as include Navigator assistance with these post-enrollment activities as part of their performance evaluations. All costs associated with reaching these consumers in FFEs would be considered allowable costs that would be covered by the Navigator grants for the FFEs and that may be drawn down as the grantee incurs such costs.

## 2. Exchange Direct Enrollment Option (§ 155.221(j))

We propose to remove § 155.221(j) and repeal the Exchange DE option, which allows states to use direct enrollment technology to transition to private-sector-focused enrollment pathways operated by QHP issuers, web-brokers, and agents and brokers, instead of or in addition to a centralized eligibility and enrollment website operated by an Exchange. We anticipate that repealing the Exchange DE option would have minimal impact on stakeholders since no resources have been expended by states or HHS on implementing it. Any potential costs and burdens associated with the Exchange DE option would be eliminated. These include costs to develop consumer-facing enrollment functionality and meet eligibility application technical requirements, as well as to maintain back-end eligibility determination functionality and other back-end eligibility services; start-up and implementation costs to develop

the appropriate privacy and security infrastructure and business controls; as well as costs related to ongoing oversight and monitoring of DE entities and maintaining the individual interfaces and transactions with each DE entity. We also anticipate that repealing the Exchange DE option could mitigate potential negative downstream impacts raised by commenters when it was proposed, including an increased uninsured and underinsured population.

## 3. Open Enrollment Period Extension (§ 155.410(e))

We are proposing to extend the individual market annual open enrollment period for all Exchanges from November 1 through January 15th for the 2022 coverage year and beyond. We do not anticipate a significant impact on the Exchange risk pool to result from this change. Consumers would benefit from a longer open enrollment period without additional demand placed on them. A lengthened open enrollment period may lead to increased enrollments which could impose additional costs on Exchanges and enrollment assisters to conduct outreach and assist new consumers. However, this change could also reduce outreach costs on Exchanges and enrollment assisters by spreading out enrollments over a greater length of time, resulting in opportunities for efficiency and increased health coverage.

## 4. Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals With a Household Income No Greater Than 150 Percent of the Federal Poverty Level (§ 155.420(d)(16))

We propose to codify a monthly special enrollment period for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for APTC, and whose household income is expected to be no greater than 150 percent of the FPL. We propose that this special enrollment period be available at the option of the Exchange in order to allow State Exchanges to decide whether to implement it based on their specific market dynamics, needs, and priorities. We also propose that Exchanges on the Federal platform will implement this special enrollment period by providing qualified individuals who are eligible with a pathway to access it through the *HealthCare.gov* application.

To provide Exchanges with flexibility to prioritize ensuring that qualifying individuals are able to obtain coverage through this special enrollment period quickly following plan selection, or to

implement this special enrollment period in keeping with their current operations, we propose to add a new paragraph at § 155.420(b)(2)(vii) to provide that the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange. We also propose to include plan category limitations by adding a new paragraph at § 155.420(a)(4)(ii)(D) to provide that an Exchange must permit eligible enrollees and their dependents to use the special enrollment period to change to a silver level plan; and to amend § 155.420(a)(4)(iii), which provides other plan category limitations for other special enrollment periods, to provide that these other plan category limitations do not apply to enrollees and dependents who qualify for the proposed special enrollment period.<sup>160</sup> Finally, we propose to add a new paragraph at § 147.104(b)(2)(i)(G) to specify that issuers are not required to provide this special enrollment period in the individual market with respect to coverage offered outside of an Exchange, because eligibility for the special enrollment period is based on eligibility for APTC, and APTC cannot be applied to coverage offered outside of an Exchange.

A monthly special enrollment period available through Exchanges for APTC-eligible qualifying individuals whose household income does not exceed 150 percent of the FPL would provide more opportunities for certain low-income APTC and CSR-eligible consumers to take advantage of the financial assistance available to them. As discussed in the preamble for this rulemaking, we believe that the benefit to providing these opportunities outweighs adverse selection concerns. Further, we believe the risk of adverse selection is mitigated to some degree by most qualifying individuals having access to a premium-free silver plan after application of APTC with a 94 percent actuarial value, because consumers eligible for a premium-free plan covering such a significant portion of health care services would likely already be enrolled if they were aware of their eligibility for such coverage. Additionally, we believe that those for whom this is the case are not likely to move in and out of coverage once they have enrolled, for example to end

<sup>160</sup> This provision would not prevent enrollees who qualify for the new special enrollment period from changing to a plan of any category through a special enrollment period that provides this flexibility, including the special enrollment periods at § 155.420(d)(4), (8), (9), (10), (12), and (14).

coverage once an immediate health care need is met, which may also limit some adverse selection risk. We also believe that applying plan category limitations to this special enrollment period would help to mitigate adverse selection because it would limit the ability of enrollees to change to a higher metal level plan based on a new health care need and then change back to a silver plan once the health issue is resolved. We also believe that enrollees who are interested in changing plans during the year through this special enrollment period would likely be deterred because such a change would generally mean they lose progress they have made toward meeting their deductibles and other accumulators. However, enrollees may still choose to enroll in a silver level plan that is more expensive than their zero dollar option, and, with a monthly special enrollment period, could make this change during the plan year based on a difference in provider network or prescription drug formulary.

Therefore, we request comment on practices, including education and outreach, that could help ensure that consumers who are eligible for this special enrollment period enroll in the zero-dollar premium silver plan that is available to them. We also seek comment on the remaining risk for issuers; for example, on the extent to which there is risk related to consumers who become aware of the availability of the proposed special enrollment period after they become sick and seek to enroll because they need medical care. Based on the possibility that consumers could enroll through the special enrollment period only after they need to use health care services, we seek comment on whether issuers may account for this risk through premium increases. We estimate a 0.5 to 2 percent increase in premiums when the enhanced APTC provisions of the ARP are in effect in states where this special enrollment period is implemented, due to increased adverse selection risk, resulting in an estimated \$250 million to \$1 billion increase in APTC/PTC outlays and decrease in income tax revenues nationwide, and we seek comment on this estimate.

We also seek comment on potential risk that individuals, including those who enroll in coverage due to a health event, later experience a household income change or change their primary place of residence such that they are no longer eligible for a silver plan with a zero dollar premium, and that these individuals will end coverage at that point. Because this special enrollment period has the potential to introduce new adverse selection risk into the

individual market, CMS also seeks comment generally on the impact on premiums of this policy in Exchanges where it is implemented, and potential regulatory tools that could mitigate these risks.

For example, Exchanges that implement this special enrollment period could try to mitigate some risks with a robust outreach and education campaign to promote awareness of the special enrollment period. However, because the proposed special enrollment period would be based on projected annual household income level, and Exchanges rely on applicants to report their most up to date household income information, it may be difficult for Exchanges to assess which individuals might be eligible for outreach and education purposes and could make targeted marketing and outreach difficult. We therefore seek comment on practices that could help mitigate this challenge, and ways to improve outreach to low-income consumers more generally. Relatedly, we seek comment on how Exchanges could help to mitigate potential confusion on the part of stakeholders that provide enrollment assistance, such as HHS Navigator grantees, and agents and brokers. We seek comment on how Exchanges and stakeholders that provide enrollment assistance could develop effective outreach and education campaigns to target this population.

Finally, we request comment on level of effort for Exchanges to implement this special enrollment period, especially within the amount of time required to make it available to consumers during the 2022 plan year.

#### 5. Clarification of Special Enrollment Period for Enrollees Who Are Newly Eligible or Newly Ineligible for Advance Payments of the Premium Tax Credit (§ 155.420(f))

We are proposing new language to clarify, for purposes of the special enrollment period rules at 45 CFR 155.420, that a qualified individual, enrollee, or his or her dependent, who qualifies for APTC because they meet the criteria at § 155.305(f), but who qualifies for a maximum APTC amount of zero dollars, is not considered APTC eligible, even when they have previously been APTC ineligible for another reason, such as having other MEC. We believe that the current special enrollment period rules that reference APTC eligibility at § 155.420(d)(6) could permit inconsistent interpretations of what it means to be newly eligible or ineligible for APTC when an individual is found

to be eligible generally to receive APTC, but for a specific APTC amount of zero dollars. We believe that this clarification will help ensure that the special enrollment periods at § 155.420(d)(6) are available to individuals as intended: those determined to be newly eligible for an APTC amount greater than zero dollars.

We believe that this change will not be relevant to a significant number of individuals in Exchanges on the Federal platform, but that for the reasons described in preamble, it will be important in light of the removal of the upper APTC eligibility limit on household income at 400 percent of the FPL for taxable years 2021 and 2022 under the ARP.<sup>161</sup> More specifically, this definition makes clear that an individual who becomes newly eligible for a maximum APTC amount of zero dollars, and who enrolls in Exchange coverage, for example, through the 2021 special enrollment period available to consumers in states on the Federal platform, would qualify for a special enrollment period per § 155.420(d)(6)(i) or (ii) if, later in the plan year, they become newly eligible for an APTC amount greater than zero dollars based on a decrease in their household income. This clarification may be helpful for any individual who experiences a decrease in household income that makes them newly eligible for an APTC amount of greater than zero dollars to understand.

As of March 1, 2021 (prior to the passage of the ARP), approximately 7.25 million enrollees through Exchanges on the Federal platform were APTC eligible, but only 36,000 (or 0.5 percent) were APTC eligible with a maximum APTC amount of zero dollars. However, just under 119,000 enrollees through Exchanges on the Federal platform reported a household income that was greater than 400 percent of the FPL. HHS analysis indicated that roughly 35,000 of this greater than 400 percent FPL population would automatically be considered APTC eligible with a maximum APTC amount of zero dollars once the 400 percent FPL limit on household income had been removed and these enrollees were no longer considered APTC ineligible simply by virtue of exceeding that limit, doubling the number of potentially impacted enrollees through Exchanges on the Federal platform even before to the passage of the ARP. Additionally, as of March 1, 2021, HHS identified roughly 501,000 enrollees that did not report any household income on their application; some of these enrollees may

<sup>161</sup> Public Law 117–2.

also be newly eligible for APTC under the new rules. Currently, after passage of the ARP and CMS' removal of the 400 percent FPL limit on household income regarding qualifying individuals applying for coverage through an Exchange on the Federal platform, the number of enrollees who did not provide household income has decreased slightly, to just under 472,000, and the number of enrollees reporting a household income greater than 400 percent of the FPL has increased to over 191,000. The number of enrollees eligible for a maximum APTC amount of zero dollars has also increased slightly, to just under 42,000 individuals.<sup>162</sup> We expect these trends continue during 2022 in Exchanges on the Federal platform and likely in other State Exchanges, as well, making this clarification especially relevant at that time.

We seek comment on this proposal, including from State Exchanges regarding whether this definition of APTC eligibility reflects their current implementation of the special enrollment period qualifying events per § 155.420(d)(6), and if not, whether there are policy concerns about this clarification, or concerns about the burden of making related changes to State Exchanges' operations. We also seek comment on whether any group of individuals who may qualify for one or more of the special enrollment periods at § 155.420(d)(6) could be harmed by this clarification, and if so, how such harm could be mitigated.

#### 6. FFE and SBE–FP User Fees (§ 156.50)

We are proposing an increased FFE user fee rate of 2.75 percent for the 2022 benefit year, which is higher than the 2.25 percent FFE user fee rate finalized in part one of the 2022 Payment Notice. We also propose to increase the SBE–FP user fee rate to 2.25 percent for the 2022 benefit year from the 1.75 percent SBE–FP user fee rate finalized in part 1 of the 2022 Payment Notice final rule.<sup>163</sup> Based on our estimated costs, enrollment (including anticipated transitions of states from the FFE and SBE–FP models to either the SBE–FP or State Exchange models), premiums for the 2021 and 2022 benefit years, and proposed user fee rates, we expect transfers from the issuers to federal government to be increased by

approximately \$200 million in plan year 2022.

We are proposing to repeal the 2023 benefit year user fee rate for the Exchange DE option in FFE and SBE–FP states, which was finalized in part 1 of the 2022 Payment Notice final rule. No state entity has approached HHS to consider this option. Since this option has not been implemented in any state, we do not expect any changes to user fee transfers from issuers to the federal government due to this rescission.

#### 7. Segregation of Funds for Abortion Services (§ 156.280)

We propose to amend the separate billing regulation at § 156.280(e)(2)(ii) that governs payments for QHPs that provide coverage of abortion services for which federal funds are prohibited. Under this proposal, we would revert to prior policy that allowed QHP issuers offering coverage of such abortion services flexibility in selecting a method to comply with the separate payment requirement in section 1303. If finalized, acceptable methods for satisfying the separate payment requirement would include sending the policy holder a single monthly invoice or bill that separately itemizes the premium amount for coverage of such abortion services; sending the policy holder a separate monthly bill for these services; or sending the policy holder a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge.

The 2019 Program Integrity Rule extensively detailed the anticipated financial and operational burdens from the separate billing regulation. We believe these proposals will remove the significant burden associated with the separate billing regulation. Those burdens included costly estimates for issuer implementation of the technical build to implement the necessary system changes to support separate billing and receipt of separate payments, which would require significant changes to current billing practice and pose increased challenges for some states and issuers given the mid-plan year implementation timeline. These activities included planning, assessment, budgeting, contracting, building and testing their systems; as well as one-time changes such as billing-related outreach and call center training. The burdens also included ongoing costs related to sending a separate bill, such as those related to identifying impacted enrollees, ensuring billing accuracy, reconciliation, quality assurance, record keeping, document retention, support for enrollees who

enter grace periods for non-payments, customer service, outreach, and compliance. Issuers would also be expected to assume annual materials costs related to printing of and sending the separate bill. We anticipated that State Exchanges would experience increased burden associated with one-time technical changes such as updating online payment portals to accept separate payments and updating enrollment materials and notices that reference binder payments, and ongoing costs related to increased customer service, outreach, and compliance.

We also stated in the 2019 Program Integrity Rule that QHP issuers were likely to consider these new costs when setting actuarially sound rates and that this would likely lead to higher premiums for enrollees. Specifically, we estimated there would be an approximate premium impact of up to 1.0 percent in plan year 2021 and each year thereafter states with QHP issuers offering coverage of abortion services for which federal funds are prohibited. We also estimated that enrollment would be slightly reduced in the impacted states as a result of the increase to premiums. In plan year 2021 and each year after, we estimated that APTC amounts would increase up to \$146 million when premium rates reflect the projected additional administrative and operational expense burdens.

We also projected in the 2019 Program Integrity Rule that the FFE would incur additional costs due to one-time technical changes and increased call volumes and additional customer services efforts. We estimated that the FFE would incur a one-time cost of \$750,000 in 2020 and ongoing annual costs of approximately \$400,000 in 2020, \$800,000 in 2021, \$600,000 in 2022, and \$400,000 in 2023 onwards to implement the separate billing policy.

We also anticipated that all impacted State Exchanges would incur one-time costs of \$9 million in 2020 for necessary technical changes such as updating online payment portals to accept separate payments and updating enrollment materials. In addition, we estimated that State Exchanges would incur ongoing annual costs associated with increased customer service, outreach, and compliance totaling \$2.4 million in 2020, \$4.8 million in 2021, \$3.6 million in 2022, and \$2.4 million 2023 onwards for all impacted State Exchanges.

We also anticipated increased costs to consumers for the time required to read and understand the separate bills and seek help from customer service, and additional time to read and send separate payments in subsequent

<sup>162</sup> These figures are drawn from internal CMS analysis as of late May, 2021, almost two months after CMS updated *HealthCare.gov* to reflect the removal of the 400 percent FPL limit on household income on applicants applying for coverage with APTC.

<sup>163</sup> 85 FR 6138.

months. For the estimated 2 million policy holders in plans offering coverage of abortion services for which federal funds are prohibited, the Program Integrity Rule estimated a total annual cost for of 2.9 million hours in 2020 with an associated annual cost of \$35.5 million. We decreased this estimated burden slightly in the May 2020 IFC to account for a burden reduction of approximately 337,793 hours with an equivalent cost savings of approximately \$4.2 million. For subsequent years, we estimated in the 2019 Program Integrity Rule that the annual enrollee burden would be approximately 2 million hours with an associated annual cost of approximately \$25.1 million.

In total, the projected burden to all issuers, states, State Exchanges performing premium billing and payment processing, the FFE, and consumers due to the separate billing policy regulation totaled \$546.1 million in 2020, \$232.1 million in 2021, \$230.7 million in 2022, and \$229.3 million annually in 2023 and onwards.

We also believe the consumer confusion and new logistical obstacles due to the separate billing regulation would disproportionately harm and burden communities who already face barriers to accessing care and that any potential coverage losses caused by the separate billing regulation could further exacerbate existing health disparities and jeopardize health outcomes. Further, issuers dropping coverage of abortion services for which federal funds are prohibited as a result of the burden associated with the separate billing regulation could transfer out-of-pocket costs for this coverage to enrollees, which may disproportionately impact low-income women who already face barriers to accessing quality health care.

Upon reassessing the separate billing policy and in light of the legal developments, we no longer see a discernable benefit to requiring separate billing that would be sufficient to outweigh its burdens. If finalized, we anticipate repeal of the separate billing regulation would remove the associated burdens to issuers, states, Exchanges, and consumers by allowing issuers to continue the billing practices and collection methods previously adopted and relied upon since publication of the 2016 Payment Notice.

#### 8. Section 1332 Waivers

In this proposed rule, the Departments propose modifications to the section 1332 waiver implementing regulations, including new proposed policies and interpretations of the

guardrails. We also propose new process and procedures for amendment and extension requests for approved section 1332 waiver plans. As outlined in this proposed rule, the policies and interpretations proposed in this rule, if finalized, would supersede and replace prior finalized policies and interpretations. The Departments also propose to modify these regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for section 1332 waivers during future emergent situations. However, this rule does not propose to alter any of the requirements related to state innovation waiver applications, compliance and monitoring, or evaluation in a way that would create any additional costs or burdens for states submitting proposed waiver applications or those states with approved waiver plans that has not already been captured in prior burden estimates. The Departments are of the view that both states with approved section 1332 waivers and states that are considering section 1332 waivers would be minimally impacted by these proposed changes in policy. The Departments anticipate that implementing these provisions would not significantly change the associated burden currently approved under OMB control number: 0938-1389/Expiration date: February 29, 2024. The Departments are of the view that section 1332 waivers could help increase state innovation, which in turn could lead to more affordable health coverage for individuals and families in states that consider implementing a section 1332 waiver program.

#### 9. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed or final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the 2022 Payment Notice proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed the 2022 Payment Notice proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we thought that the number of past commenters on the 2022 Payment Notice proposed would be a fair estimate of the number of reviewers

of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11-9111), we estimate that the cost of reviewing this rule is \$114.24 per hour, including overhead and fringe benefits.<sup>164</sup> Assuming an average reading speed, we estimate that it would take approximately 1 hour for the staff to review half of this proposed rule. We assume 245 entities will review this proposed rule. For each entity that reviews the rule, the estimated cost is approximately \$114.24 (1 hour × \$114.24). Therefore, we estimate that the total cost of reviewing this regulation is approximately \$27,989 (\$114.24 × 245 reviewers).

#### D. Regulatory Alternatives Considered

In developing the policies contained in this proposed rule, we considered numerous alternatives to the presented proposals. Below we discuss the key regulatory alternatives that we considered.

We considered taking no action related to our proposal to add a new paragraph at § 155.420(d)(16), to provide a monthly special enrollment period for qualified individuals or enrollees, or the dependent of a qualified individual or enrollee, who are eligible for APTC, and whose household income is expected to be no greater than 150 percent of the FPL. However, we believe that many consumers will benefit from having additional opportunities to enroll in low-cost Exchange coverage, and that those who do not enroll during the open enrollment period are likely to have been unaware of their option to enroll in a plan with no monthly premium through the Exchange.

We also considered other strategies to help individuals who may benefit from the proposed special enrollment period, some of whom qualify for another, existing special enrollment period. For example, consumers who do not receive timely notice of an event that triggers eligibility for a special enrollment period, and otherwise were reasonably unaware that a triggering event occurred under § 155.420(d)(1) may be able to

<sup>164</sup> [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

benefit from a policy finalized at § 155.420(c)(5) in the 2022 Payment Notice that requires the Exchange to provide 60 days from the date that the consumer knew or reasonably should have known of the occurrence of the triggering event.<sup>165</sup> Exchanges could leverage this provision to help enable consumers to maintain coverage after losing Medicaid. We solicit comment regarding additional strategies to help consumers maintain coverage.

We considered taking no action related to our proposal to clarify, for purposes of the special enrollment period rules at § 155.420, that a qualified individual, enrollee, or his or her dependent who qualifies for APTC because they meet the criteria at § 155.305(f), but who qualifies for a maximum APTC amount of zero dollars, is not considered APTC eligible. However, we believe that consumers and other stakeholders will benefit from clarity on this issue because it improves transparency of Exchanges' implementation of the special enrollment period qualifying events provided at § 155.420(d)(6). Increased transparency will allow consumers to better understand the eligibility criteria for special enrollment periods provided by § 155.420(d)(6) and may help Exchanges and other stakeholders to more effectively message rules that determine eligibility. We also considered applying this clarification only to some of the special enrollment period qualifying events at § 155.420(d)(6), such as only to those at paragraphs (d)(6)(ii)–(iii), to permit some individuals to access a special enrollment period based on newly becoming eligible for a maximum APTC amount of zero dollars after previously having been APTC ineligible for another reason. We believe that applying this definition to all of the qualifying events in § 155.420(d) is simpler and makes sense based on the nature of the qualifying events. However, we have solicited comment on whether Exchanges and other stakeholders agree with this approach, or believe that another definition of APTC eligibility should apply to certain qualifying events at § 155.420(d)(6).

We considered restoring user fee rates to their 2021 levels at 3 percent and 2.5 percent of total monthly premium for issuers in the FFE and SBE-FPs, respectively. However, based on our analysis of estimated 2022 enrollment, premiums, and contract costs, we determined that this increase would be unnecessary to finance the Exchange essential functions.

Regarding the section 1332 waiver proposals in this rule, the Departments considered rescinding the 2018 Guidance and the regulatory updates and policies finalized in part 1 of the 2022 Payment Notice final rule such that the Departments would rely on the statute for review and approval of section 1332 waiver applications. The Departments did not choose this option because not proposing policies, interpretations and standards to help explain the program requirements would lead to uncertainty for states considering section 1332 waiver applications. The Departments also considered codifying the policies and interpretations in the 2015 Guidance in regulation, but determined proposing new policies and interpretations (some of which align with previous guidance and rulemaking) was the clearest way to explain the proposed requirements for submission and approval of section 1332 waivers.

#### *E. Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of “small entity.” HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least 5 percent of small entities experience a change in revenues of more than 3 to 5 percent.

In this proposed rule, we propose revised 2022 user fee rates, which will impact issuer rate setting. We believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of \$41.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be \$35 million or

less.<sup>166</sup> We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from MLR annual report<sup>167</sup> submissions for the 2019 MLR reporting year, approximately 77 out of 479 issuers of health insurance coverage nationwide had total premium revenue of \$41.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since over 67 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding \$41.5 million. The user fee rates proposed in this rule are lower than the 2021 benefit year user fee rates by 0.25 percent, and these new proposed rates are higher than the previously finalized 2022 benefit year user fee rates by 0.5 percent. Therefore, these user fee rates would only impact premium revenue for these issuers by approximately 0.25 percent, since no issuer has effectuated payments under the previously finalized user fee rates, and this impact is below HHS's 3 to 5 percent significance threshold stated above.

In this proposed rule, we also propose to codify a new monthly special enrollment period for certain APTC-eligible individuals. Because this special enrollment period has the potential to introduce new adverse selection risk into the individual market, we seek comment in the RIA on the impact on premiums of this policy in Exchanges where it is implemented. We estimate that this policy could result in an increase in premiums of 0.5 to 2 percent when the enhanced APTC provisions of the ARP are in effect, and this impact is below HHS's 3 to 5 percent significance threshold stated earlier in this preamble.

In addition, the other proposals in this rule would either reduce costs or have no cost impact. Therefore, we do not expect the proposed provisions of this rule to affect a substantial number of small entities. We do not believe that this threshold will be reached by the requirements in this proposed rule or final rule. Therefore, the Secretary has determined that this proposed rule will not have a significant economic impact

<sup>166</sup> <https://www.sba.gov/document/support-table-size-standards>.

<sup>167</sup> Available at <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html>.

on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. While this rule is not subject to section 1102 of the Act, we have determined that this proposed rule would not affect small rural hospitals. Therefore, the Secretary has determined that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

#### F. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately \$158 million. Although we have not been able to quantify all costs, we expect the combined impact on state, local, or Tribal governments and the private sector to be below the threshold.

#### G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. In our view, while this proposed rule would not impose substantial direct requirement costs on state and local governments, this regulation has federalism implications due to potential direct effects on the distribution of power and responsibilities among the state and federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, we have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with

and attending conferences of the NAIC, and consulting with state insurance officials on an individual basis.

While developing this rule, we attempted to balance the states' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, we complied with the requirements of Executive Order 13132.

Because states have flexibility in designing their Exchange and Exchange-related programs, state decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an Exchange. For states that elected previously to operate an Exchange, those states had the opportunity to use funds under Exchange Planning and Establishment Grants to fund the development of data. Accordingly, some of the initial cost of creating programs was funded by Exchange Planning and Establishment Grants. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the state. A user fee is assessed on issuers under all existing Exchange models, including State Exchanges where the user fee is assessed by the state, SBE-FPs, and the FFEs. We have solicited comment on the proposed user fee rate of 2.75 percent of monthly premiums for issuers in FFEs and 2.25 percent of monthly premiums for issuers in SBE-FPs.

#### H. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller for review. This proposed rule, if finalized as proposed, is expected to be a "major rule" as that term is defined in 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of \$100 million or more.

#### List of Subjects

##### 31 CFR Part 33

Health care, Health insurance, Reporting and recordkeeping requirements.

##### 45 CFR Part 147

Age discrimination, Citizenship and naturalization, Civil rights, Health care,

Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

##### 45 CFR Part 155

Administrative practice and procedure, Advertising, Age discrimination, Brokers, Civil rights, Citizenship and naturalization, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Technical assistance, Taxes, Women, Youth.

##### 45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Age discrimination, Alaska, Brokers, Citizenship and naturalization, Civil rights, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Prescription drugs, Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of the Treasury proposes to amend 31 CFR subtitle A as set forth below:

#### PART 33—WAIVERS FOR STATE INNOVATION

- 1. The authority citation for part 33 continues to read as follows:

**Authority:** Sec. 1332, Pub. L. 111-148, 124 Stat. 119.

- 2. Amend § 33.108 by revising paragraphs (f)(3)(iv) introductory text and (f)(3)(iv)(A) through (C) to read as follows:

##### § 33.108 Application procedures.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*



(iv) The analyses, actuarial certifications, data, assumptions, targets, and other information set forth in paragraph (f)(4) of this section sufficient to provide the Secretary and the Secretary of Health and Human Services, as applicable, with the necessary data to determine that the State's proposed waiver satisfies the general requirements for approval under section 1332(b)(1) of the Affordable Care Act consistent with the provisions of this paragraph (f)(3)(iv):

(A) As required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under the Affordable Care Act as certified by the Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that the State seeks to waive. To satisfy the comprehensive coverage requirement, the Secretary and the Secretary of Health and Human Services, as applicable, must determine that the coverage under the State plan is forecasted to be at least as comprehensive overall for residents of the state as coverage absent the waiver;

(B) As required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide. To satisfy the affordability requirement, the Secretary and the Secretary of Health and Human Services, as applicable, must determine that the coverage under the State plan is forecasted to be as affordable overall for state residents as coverage absent the waiver;

(C) As required under section 1332(b)(1)(C) of the Affordable Care Act (the scope of coverage requirement), will provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide. To satisfy the scope of coverage requirement, the Secretary and the Secretary of Health and Human Services, as applicable, must determine that the State plan will provide coverage to a comparable number of state

residents under the waiver as would have coverage absent the waiver; and

- \* \* \* \* \*
- 3. Amend § 33.118 by—
- a. Revising the section heading;
- b. Revising paragraph (a);
- c. Revising paragraph (b)(3);
- d. Adding paragraph (b)(5);
- e. Adding paragraph (g).

The revisions and additions read as follows:

**§ 33.118 Modification from the normal public notice requirements during an emergent situation.**

(a) The Secretary and the Secretary of Health and Human Services may modify, in part, the State public notice requirements under § 33.112(a)(1), (b), (c), and (d) and the Federal public notice procedures under § 33.116(b) to expedite a decision on a proposed section 1332 waiver request during an emergent situation, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life.

(b) \* \* \*  
(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the emergent situation and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

\* \* \* \* \*  
(5) The State must explain in its request for a modification from State-level notice procedures under paragraph (a) of this section how the emergent circumstances underlying its request results from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life could not reasonably have been foreseen and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers.

\* \* \* \* \*

(g) The Departments will consider circumstances to be emergent when they could not have been reasonably foreseen. The Departments will assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number of days a State may have been aware of such issues.

- 4. Amend § 33.120 by—
- a. Revising paragraph (a);
- b. Revising paragraph (c)(2)(i); and
- c. Adding paragraphs (c)(2)(ii)(F) and (c)(2)(iii).

The revisions and additions read as follows:

**§ 33.120 Monitoring and compliance.**

(a) *General.* (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of Health and Human Services, as applicable, a State must comply with all applicable Federal laws and regulations, unless expressly waived. A State must, within the timeframes specified in law and regulation come into compliance with any changes in Federal law and regulation affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) The Secretary and the Secretary of Health and Human Services will examine compliance with Federal and regulatory requirements consistent with § 155.1308(f)(3)(iv) when conducting implementation reviews under paragraph (b) of this section.

\* \* \* \* \*

(c) \* \* \*  
(2) \* \* \* (i) The Secretary and the Secretary of Health and Human Services may modify, in part, State post award requirements under this paragraph (c)(2) for an approved section 1332 waiver request during an emergent situation, when the application of the post award public notice requirements would be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life.

(ii) \* \* \*  
(F) The State must explain in its request for modification under this paragraph (c)(2) how the emergent circumstances underlying its request results from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or

human life and could not reasonably have been foreseen and how the application of the post-award public notice requirements would be contrary to the interests of consumers.

(iii) The Secretary and the Secretary of Health and Human Services will consider circumstances to be emergent when they could not have been reasonably foreseen. The Secretary and the Secretary of Health and Human Services will assess “reasonable foreseeability” based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number of days a State may have been aware of such issues.

\* \* \* \* \*

■ 5. Section 33.122 is added to read as follows:

**§ 33.122 Pass-through Funding for Approved Waivers.**

(a) *Pass-through Funding.* With respect to a State’s approved section 1332 waiver, under which, due to the structure of the approved State waiver plan, individuals and small employers in the State would not qualify for or would qualify for a reduced amount of premium tax credit under section 36B of the Internal Revenue Code, small business tax credit under section 45R of the Internal Revenue Code, or cost-sharing reductions under ACA part I of subtitle E for which they would otherwise be eligible, the Secretary and the Secretary of the Health and Human Services shall provide for an alternative means by which the aggregate amount of such credits or reductions that would have been paid on behalf of participants in the Exchanges had the State not received such waiver shall be paid to the State for purposes of implementing the approved State waiver plan. Such amount shall be determined annually by the Secretary and the Secretary of Health and Human Services, taking into consideration the experience of other States with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other States. This amount can be updated to reflect applicable changes in Federal or State law.

(b) [Reserved]

■ 6. Amend § 33.128 by revising paragraph (a) to read as follows:

**§ 33.128 Periodic evaluation requirements.**

(a) The Secretary and the Secretary of Health and Human Services, as applicable, shall periodically evaluate the implementation of a program under a section 1332 waiver consistent with

§ 33.108(f)(3)(iv) and any terms and conditions governing the section 1332 waiver.

\* \* \* \* \*

■ 7. Section 33.130 is added to read as follows:

**§ 33.130 Waiver Amendment.**

(a) *Amendment to an approved section 1332 waiver.* A State may request an amendment to an approved section 1332 waiver from the Secretary and the Secretary of Health and Human Services. A section 1332 waiver amendment is considered a change to an approved section 1332 waiver plan that is not otherwise allowable under the terms and conditions of an approved waiver, a change that could impact any of the section 1332 statutory guardrails or a change to the program design for an approved waiver. A state is not authorized to implement any aspect of the proposed amendment without prior approval by the Secretary and the Secretary of Health and Human Services.

(b) [Reserved]

■ 8. Section 33.132 is added to read as follows:

**§ 33.132 Waiver Extension.**

(a) *Extension.* A State may request continuation of an approved section 1332 waiver, and such request shall be deemed granted unless the Secretary and the Secretary of Health and Human Services, within 90 days after the date of submission of a complete waiver extension request to the Secretary and the Secretary of Health and Human Services, either denies such request in writing or informs the State in writing with respect to any additional information that is needed in order to make a final determination with respect to the request.

(b) [Reserved]

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below.

**PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL INSURANCE MARKETS**

■ 9. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92, as amended, and section 3203, Pub. L. 116–136, 134 Stat. 281.

■ 10. Amend § 147.104 by—

■ a. Revising paragraphs (b)(2)(i)(E) and (F); and

■ b. Adding paragraph (b)(2)(i)(G).

The revisions and addition read as follows:

**§ 147.104 Guaranteed availability of coverage.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) Section 155.420(d)(12) of this subchapter (concerning plan and benefit display errors);

(F) Section 155.420(d)(13) of this subchapter (concerning eligibility for insurance affordability programs or enrollment in the Exchange); and

(G) Section 155.420(d)(16) of this subchapter (concerning eligibility for advance payments of the premium tax credit and household income, as defined in 26 CFR 1.36B–1(e), that is expected to be no greater than 150 percent of the federal poverty level).

\* \* \* \* \*

**PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT**

■ 11. The authority citation for part 155 continues to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 12. Amend § 155.210 by revising paragraph (e)(9) to read as follows:

**§ 155.210 Navigator program standards.**

\* \* \* \* \*

(e) \* \* \*

(9) The Exchange may require or authorize Navigators to provide information and assistance with any of the following topics. In Federally-facilitated Exchanges, Navigators are required to provide information and assistance with all of the following topics:

(i) Understanding the process of filing Exchange eligibility appeals;

(ii) Understanding and applying for exemptions from the requirement to maintain minimum essential coverage granted through the Exchange;

(iii) The Exchange-related components of the premium tax credit reconciliation process, and understanding the availability of IRS resources on this process;

(iv) Understanding basic concepts and rights related to health coverage and how to use it; and

(v) Referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about the Exchange application and

enrollment process, and premium tax credit reconciliations.

\* \* \* \* \*

§ 155.221 [Amended]

- 13. Amend § 155.221 by removing paragraph (j).
- 14. Amend § 155.410 by revising paragraph (e)(3) and adding paragraph (e)(4).

The revision and addition read as follows:

§ 155.410 Initial and annual open enrollment periods.

\* \* \* \* \*

(e) \* \* \*

(3) For the benefit years beginning on January 1, 2018 to January 1, 2021, the annual open enrollment period begins on November 1 and extends through December 15 of the calendar year preceding the benefit year.

(4) For the benefit years beginning on or after January 1, 2022, the annual open enrollment period begins on November 1 of the calendar year preceding the benefit year and extends through January 15 of the benefit year.

\* \* \* \* \*

- 15. Amend § 155.420 by—
- a. Revising paragraph (a)(4)(ii)(C);
- b. Adding paragraph (a)(4)(ii)(D);
- c. Revising paragraph (a)(4)(iii) introductory text; and
- d. Adding paragraphs (b)(2)(vii), (d)(16), and (f).

The revision and additions read as follows:

§ 155.420 Special enrollment periods.

\* \* \* \* \*

(a) \* \* \*  
(4) \* \* \*  
(ii) \* \* \*

(C) No later than January 1, 2024, if an enrollee or his or her dependents become newly ineligible for advance payments of the premium tax credit in accordance with paragraph (d)(6)(i) or (ii) of this section, the Exchange must allow the enrollee or his or her dependents to change to a QHP of any metal level, if they elect to change their QHP enrollment; or

(D) If an enrollee or his or her dependents qualify for a special enrollment period in accordance with paragraph (d)(16) of this section and are not enrolled in a silver-level QHP, the Exchange must allow the enrollee and his or her dependents to change to a silver-level QHP if they elect to change their QHP enrollment;

(iii) For the other triggering events specified in paragraph (d) of this section, except for paragraphs (d)(2)(i), (d)(4), and (d)(6)(i) and (ii) of this section for becoming newly eligible or

ineligible for CSRs and paragraphs (d)(8), (9), (10), (12), (14), and (16) of this section:

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

(vii) If a qualified individual or enrollee, or the dependent of a qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 CFR 1.36B–1(e), is expected to be no greater than 150 percent of the federal poverty level, enrolls in a QHP or changes from one QHP to another one time per month in accordance with paragraph (d)(16) of this section, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange.

\* \* \* \* \*

(d) \* \* \*

(16) At the option of the Exchange, a qualified individual or enrollee, or the dependent of a qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 CFR 1.36B–1(e), is expected to be no greater than 150 percent of the federal poverty level, may enroll in a QHP or change from one QHP to another one time per month.

\* \* \* \* \*

(f) For purposes of this section, references to eligibility for advance payments of the premium tax credit refer to being eligible for such advance payments in an amount greater than zero dollars per month. References to ineligibility for advance payments of the premium tax credit refer to being ineligible for such payments or being eligible for such payments but being eligible for a maximum of zero dollars per month of such payments.

\* \* \* \* \*

- 16. Amend § 155.1308 by revising paragraphs (f)(3)(iv) introductory text and (f)(3)(iv)(A) through (C) to read as follows:

§ 155.1308 Application procedures.

\* \* \* \* \*

(f) \* \* \*  
(3) \* \* \*

(iv) The analyses, actuarial certifications, data, assumptions, targets, and other information set forth in paragraph (f)(4) of this section sufficient to provide the Secretary and the Secretary of the Treasury, as applicable, with the necessary data to determine that the State’s proposed waiver satisfies the general requirements for approval

under section 1332(b)(1) of the Affordable Care Act consistent with the provisions of this paragraph (f)(3)(iv);

(A) As required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under the Affordable Care Act as certified by the Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that the State seeks to waive. To satisfy the comprehensive coverage requirement, the Secretary and the Secretary of the Treasury, as applicable, must determine that the coverage under the State plan is forecasted to be at least as comprehensive overall for residents of the state as coverage absent the waiver;

(B) As required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide. To satisfy the affordability requirement, the Secretary and the Secretary of the Treasury, as applicable, must determine that the coverage under the State plan is forecasted to be at least as affordable overall for state residents as coverage absent the waiver;

(C) As required under section 1332(b)(1)(C) of the Affordable Care Act (the scope of coverage requirement), will provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide. To satisfy the scope of coverage requirement, the Secretary and the Secretary of the Treasury, as applicable, must determine that the State plan will provide coverage to a comparable number of state residents under the waiver as would have coverage absent the waiver; and

\* \* \* \* \*

- 17. Amend § 155.1318 by—
- a. Revising the section heading;
- b. Revising paragraphs (a) and (b)(3); and
- c. Adding paragraphs (b)(5) and (g).

The revisions and addition read as follows:

**§ 155.1318 Modification from the normal public notice requirements during an emergent situation.**

(a) The Secretary and the Secretary of the Treasury may modify, in part, the State public notice requirements under § 155.1312(a)(1), (b), (c), and (d) and the Federal public notice procedures under § 155.1316(b) to expedite a decision on a proposed section 1332 waiver request during an emergent situation, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life.

(b) \* \* \*

(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the emergent situation and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

\* \* \* \* \*

(5) The State must explain in its request for a modification from State-level notice procedures under paragraph (a) of this section how the emergent circumstances underlying its request result from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life could not reasonably have been foreseen and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers.

\* \* \* \* \*

(g) The Secretary and the Secretary of the Treasury will consider circumstances to be emergent when they could not have been reasonably foreseen. The Secretary and the Secretary of the Treasury will assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number

of days a State may have been aware of such issues.

- 18. Amend § 155.1320 by—
- a. Revising paragraph (a);
- b. Revising the paragraph heading for paragraph (c)(2);
- c. Revising paragraph (c)(2)(i); and
- d. Adding paragraphs (c)(2)(ii)(F) and (c)(2)(iii).

The revisions and additions read as follows:

**§ 155.1320 Monitoring and compliance.**

(a) General. (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of the Treasury, as applicable, a State must comply with all applicable Federal laws and regulations, unless expressly waived. A State must, within the timeframes specified in law and regulation come into compliance with any changes in Federal law and regulation affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) The Secretary and the Secretary of the Treasury will examine compliance with Federal and regulatory requirements consistent with § 155.1308(f)(3)(iv) when conducting implementation reviews under paragraph (b) of this section.

\* \* \* \* \*

(c) \* \* \*

(2) *Modification from the normal post award requirements during an emergent situation.* (i) The Secretary and the Secretary of the Treasury may modify, in part, State post award requirements under this paragraph (c)(2) for an approved section 1332 waiver request during an emergent situation when the application of the post award public notice requirements would be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life.

(ii) \* \* \*

(F) The State must explain in its request for a modification under paragraph (c)(2) of this section how the emergent circumstances underlying its request results from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to health insurance coverage, consumers' access to health care, or human life and could not reasonably have been foreseen and how the application of the post award public notice requirements would be contrary to the interests of consumers.

(iii) The Secretary and the Secretary of the Treasury will consider circumstances to be emergent when they could not have been reasonably foreseen. The Secretary and the Secretary of the Treasury will assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number of days a State may have been aware of such issues.

\* \* \* \* \*

■ 19. Section 155.1322 is added to subpart N to read as follows:

**§ 155.1322 Pass-Through Funding for Approved Waivers.**

(a) *Pass-through Funding.* With respect to a State's approved section 1332 waiver, under which, due to the structure of the approved State waiver plan, individuals and small employers in the State would not qualify for or would qualify for a reduced amount of premium tax credit under section 36B of the Internal Revenue Code, small business tax credit under section 45R of the Internal Revenue Code, or cost-sharing reductions under ACA part I of subtitle E for which they would otherwise be eligible, the Secretary and the Secretary of the Treasury shall provide for an alternative means by which the aggregate amount of such credits or reductions that would have been paid on behalf of participants in the Exchanges had the State not received such waiver shall be paid to the State for purposes of implementing the approved State waiver plan. Such amount shall be determined annually by the Secretary and the Secretary of the Treasury, taking into consideration the experience of other States with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other States. This amount can be updated to reflect applicable changes in Federal or State law.

(b) [Reserved]

■ 20. Amend § 155.1328 by revising paragraph (a) to read as follows:

**§ 155.1328 Periodic evaluation requirements.**

(a) The Secretary and the Secretary of the Treasury, as applicable, shall periodically evaluate the implementation of a program under a section 1332 waiver consistent with § 155.1308(f)(3)(iv) and any terms and conditions governing the section 1332 waiver.

\* \* \* \* \*

■ 21. Section 155.1330 is added to subpart N to read as follows:

**§ 155.1330 Waiver Amendment.**

(a) *Amendment to an approved section 1332 waiver.* A State may request an amendment to an approved section 1332 waiver from the Secretary and the Secretary of the Treasury. A section 1332 waiver amendment is considered a change to a section 1332 waiver plan that is not otherwise allowable under the terms and conditions of an approved waiver, a change that could impact any of the section 1332 statutory guardrails or a change to the program design for an approved waiver. A state is not authorized to implement any aspect of the proposed amendment without prior approval by the Secretary and the Secretary of the Treasury.

(b) [Reserved]

■ 22. Section 155.1332 is added to subpart N to read as follows:

**§ 155.1332 Waiver Extension.**

(a) *Extension.* A State may request continuation of an approved section 1332 waiver, and such request shall be deemed granted unless the Secretary and the Secretary of the Treasury, within 90 days after the date of submission of a complete waiver extension request to the Secretary and the Secretary of the Treasury, either

denies such request in writing or informs the State in writing with respect to any additional information that is needed in order to make a final determination with respect to the request.

(b) [Reserved]

**PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES**

■ 23. The authority citation for part 156 is revised to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, and 26 U.S.C. 36B.

■ 24. Amend § 156.115 by revising paragraph (a)(3) to read as follows:

**§ 156.115 Provision of EHB.**

(a) \* \* \*

(3) With respect to the mental health and substance use disorder services, including behavioral health treatment services, required under § 156.110(a)(5) of this subpart, comply with the requirements under section 2726 of the Public Health Service Act and its implementing regulations.

\* \* \* \* \*

■ 25. Amend § 156.280 by revising the heading and paragraph (e)(2)(ii) to read as follows:

**§ 156.280 Segregation of funds for abortion services.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) An issuer will be considered to satisfy the obligation in paragraph (e)(2)(i) of this section if it sends the policy holder a single monthly invoice or bill that separately itemizes the premium amount for coverage of abortion services described in paragraph (d)(1) of this section; sends the policy holder a separate monthly bill for these services; or sends the policy holder a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services, and specifies the charge.

\* \* \* \* \*

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

**Mark Mazur,**

*Deputy Assistant Secretary (Tax Policy), Department of the Treasury.*

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